

LOCALISM, DIVERSITY, AND MEDIA OWNERSHIP

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

NOVEMBER 8, 2007

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

Hearing held on November 8, 2007	Page 1
Statement of Senator Cantwell	7
Statement of Senator Dorgan	1
Statement of Senator Inouye	9
Prepared statement	10
Statement of Senator Kerry	5
Statement of Senator Lott	7
Statement of Senator Nelson	3
Statement of Senator Pryor	54
Statement of Senator Smith	6
Statement of Senator Snowe	8
Statement of Senator Stevens	4
Statement of Senator Thune	50

WITNESSES

Blethen, Frank A., Publisher and CEO, The Seattle Times	14
Prepared statement	15
Articles, dated September 9, 2007, from <i>The Seattle Times</i> , entitled “Fasten Your Seat Belts: Full-Speed Media Ahead”, “Democracy, The Press at A Critical Juncture” and “Do we Currently Have a System That Would Make our Founding Fathers Proud?”	17, 18, 19
Articles, dated September 10, 2007, from <i>The Seattle Times</i> , entitled “Failures of the American Airwaves” and “Dispersed Media Ownership Serves Democratic Values”	21
Articles, dated September 16, 2007, from <i>The Seattle Times</i> , entitled “Build Broadband” and “Free the Internet”	22, 23
Article, dated September 26, 2007, from <i>The Seattle Times</i> , entitled “The Local Voice of Radio has Been Muffled by Greed”	23
Article, dated October 3, 2007, from <i>The Seattle Times</i> , entitled “FCC Fiddles While Nation’s Broadband Falls Behind”	24
Articles, dated November 4, 2007, from <i>The Seattle Times</i> , entitled “Headlong Into the Murk of Media” and “Defy News Corp.”	25, 26
Goodmon, James F., President and CEO, Capitol Broadcasting Company, Inc.	32
Prepared statement	34
Lavine, John, Dean, Medill School of Journalism, Northwestern University	36
Prepared statement	38
Nogales, Alex, President and CEO, National Hispanic Media Coalition	10
Prepared statement	12
Winter, Timothy F., President, Parents Television Council	26
Prepared statement	29

APPENDIX

Letter, dated November 7, 2007 to Senators Daniel K. Inouye and Ted Stevens from Jean M. Prewitt, President and CEO, Independent Film & Television Alliance	67
National Association of Broadcasters, prepared statement	59
Response to written questions submitted by Hon. Frank R. Lautenberg to: James F. Goodmon	70
Alex Nogales	68
Timothy F. Winter	69

LOCALISM, DIVERSITY, AND MEDIA OWNERSHIP

THURSDAY, NOVEMBER 8, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. We'll call the hearing to order this morning. This is a full committee hearing on localism, diversity, and media ownership of the Senate Commerce, Science, and Transportation Committee.

Senator Inouye will be here in about 10 minutes. He is stuck in traffic, which is a pretty usual condition here in the Washington, D.C., metropolitan area. But, Senator Inouye will be with us, as well other colleagues. I welcome my colleague from Florida, to be with us, as well.

This hearing is a result of some testimony we heard recently, that the Chairman of the Federal Communications Commission was proposing to wrap up, by the end of this year, a proceeding that would relax media ownership rules. We were surprised, on this committee, by that. The announcement was not made to the Congress, but, rather, inside the Federal Communications Commission.

It is certain that a relaxing of the media ownership restrictions is intended, by those who push it, to allow greater concentration in the media. Now, I don't think there is anything that either requires or encourages the relaxing of ownership rules or limits. There's nothing that I know of that requires it or even encourages it. I know of no one in the country, let alone this room, who wakes up in the middle of the night in a cold sweat and says, "You know what? We've got a very serious problem. We need to have much more concentration in the media." If that person exists, I'd love to have a quiet visit with them and propose some medication.

The fact is, we have galloping concentration in the media, have had it for some long while—radio, television, and newspapers. It has been galloping concentration in a manner that I think is, frankly, unhealthy. We are now told by some, and I am told by the chairman of the Federal Communications Commission, that there needs to be additional concentration, including cross-ownership op-

portunities with newspapers, and it raises some very significant questions. Let me describe a few of the opening questions.

Number one, the issue of localism and the issue of public interest are both issues that are very, very important. A task force on localism was begun 4 years ago, by then Chairman Powell. There has not been a proceeding on localism, and the task force itself has not completed its work, or the work on localism was not completed. If it was completed, it wouldn't have been a task force—or, rather, a proceeding, in any event. A proceeding on public interest was started in the year 1999, has never been completed. So, public interest—we're talking about 8 years ago—a task force on localism—we're talking 4 years ago; neither of them completed. And now we are told that the chairman of the Federal Communications Commission wishes to march briskly to a December 18 date to develop a new rule, which has not yet been disclosed, on relaxing ownership rules.

I think that is a horrible idea, one that is counter to the public interest, but others will probably have other notions of it, as well, and there is certainly room for some discussion.

I do think that proceedings must be completed first on the issue of public interest and localism before one has any opportunity to evaluate ownership issues. Now, I met with the Chairman recently, and we talked about a number of things that they are doing. The issue of reporting requirements by broadcast operators, they are going to ask for much greater reporting, because the reporting will tell them what is actually happening with this increased concentration. But that reporting doesn't yet exist, and so, the knowledge base or the base of facts don't exist. And, in addition, I asked about things like voice tracking. The answer was, "We don't have that information." I said, "Well, wouldn't you need that information in order to determine what has happened out there in the panoply of radio- and television/newspaperland and the concentration of ownership? Wouldn't you need to know those things before you start trying to answer the question, 'What kind of a rule would we like with respect to relaxing ownership?'"—if, in fact, it should be relaxed at all; I would take the opposite position.

The answer is, "Yes, you need to know those things before you even begin thinking about a new rule." One of the concerns I have, and a significant one, is, there will be, it appears to me, perhaps a month, maximum, for the American people to weigh on a new rule that will be proposed for final action on December 18. That doesn't meet any test of reasonableness or any standard that I know that makes any sense.

I will be introducing legislation today, called the Media Ownership Act of 2007. The bill will be cosponsored by myself and Senator Lott, with Senators Snowe, Obama, Kerry, Nelson of Florida, Cantwell, and Feinstein, and I expect we'll be joined by other Members of Congress, as well. And we would call for a 90-day comment period on the actual rules, but, even before that, we believe that there needs to be the completion of a separate proceeding on localism, with 90 days of comment on recommendations for improving localism.

First and foremost, do that, provide the requisite 90 days before you even begin with respect to the issue of ownership rules, which themselves should have at least 90 days.

The last time the Federal Communications Commission attempted to do this, the U.S. Senate voted to block it, by 55 to 40, September 16, 2003, on a Resolution of Disapproval. The Federal courts then stayed the rule. This, as you've heard my description of who will introduce the legislation today, is a bipartisan concern about potential actions of the Federal Communications Commission, that will occur within the next 6 to 7 weeks, that will have substantial impact and consequences for the American people. We need to get this right. And in my judgment, the chairman of the Federal Communications Commission, having not completed the proceeding on public interest, having not completed the proceedings on localism, is not in a position where he can credibly suggest we ought to have a rule completed by the Federal Communications Commission on December 18 dealing with media ownership. That is not a thoughtful approach, and not the right way to proceed.

We will hear testimony from people. There's plenty of room for disagreement here. I feel strongly, as you can tell, but we'll hear testimony from both sides.

Senator Stevens, Senator Inouye has called, and is stuck in traffic, but will be with us, I think, in 10 minutes to 15 minutes. Let me—and Senator Stevens—Senator Inouye just got out of traffic—

[Laughter.]

Senator DORGAN.—and we welcome him here. Do you want to—

The CHAIRMAN. May I ask that my statement be made a part of the record.

Senator DORGAN. Without objection, the statement of Senator Inouye will be made a part of the record.

Senator DORGAN. Senator Stevens, you wish to defer to Senator Nelson?

Senator STEVENS. Yes, please.

Senator DORGAN. Senator Nelson?

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator BILL NELSON. Mr. Chairman, I feel strongly about this, as you do.

And when you go back to the initial Act, it was 1934 that Congress had passed the Communications Act, and it laid out the principle that the Nation's airwaves belong to the people, and that the broadcasters are the trustees of those airwaves, and that they ought to serve the public interest.

Well, a lot has changed, and the technology has moved on. And now, it's cable television, in addition to the broadcasters, it's satellite radio, and it's television even on the Internet. But one thing that hasn't changed is that the airwaves still belong to the people, and the broadcasters still have a responsibility to serve and respond to the local community needs. And I feel strongly about this, and you've already made reference to the fact that we have an understanding that the Federal Communications Commission Chairman Martin intends to call a vote, no later than December 18, on

an order that may substantially relax or repeal some of the current media ownership rules.

Now, I hope that the FCC will reconsider that plan. The media landscape in this country has changed drastically in the last 10 to 15 years, and I certainly want to examine the ways of creating incentives for new media voices.

What I oppose, Mr. Chairman, is the proposals that will allow one company or one consortium to control the media landscape in the local community. Competition and diversity are good. And competition, that we all extol up here in the private marketplace ought to work with regard to delivering the best product at the best price for the consumers of the media, as well.

And I just want to give one example. People often point out, "Well, there is not a problem in Tampa, Florida, because Media General owns the *Tampa Tribune* and also one of the main TV stations, the NBC affiliate, Channel 8, WFLA." But what they ignore is the fact that the *Tampa Tribune* is not a monopoly of the newspaper market. That is a very competitive market between the *St. Petersburg Times* and the *Tampa Tribune*, so there is the competition there.

Go 90 miles away to Orlando, the *Orlando Sentinel* has a monopoly in most of the Orlando market of the television stations. And if you combined them, you would basically have monopoly of the entire delivery of most of the news through one particular ownership. And I simply don't think that that's in the interest of the public.

Thank you, Mr. Chairman.

Senator DORGAN. Senator Nelson, thank you very much.
Senator Stevens?

**STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Thank you very much.

You know, I've remarked before to this committee about my experience with television, as a father of five kids, when I refused to buy it until the mayor, who lived about three doors down from me, came and told me that my kids were sprawled out in his living room every time he came home, and why in the hell didn't I buy a television? So, I do think that we ought to keep in mind that it's still a changing entertainment world, still a changing information world. Today, those kids could probably watch even worse things than I had dreamed of on their computer in their individual rooms. And we're dealing with such change that, whether video is delivered from broadcast signal, a storage device, or an Internet package, the policy issues Congress faces are very diverse, but we do have to focus on them.

Two very important issues are localism and diversity. They're at the core of our country's values, and they should remain the core of our communications platforms. But, at the same time, we need to understand that those platforms are changing. Just Tuesday, the latest numbers revealed that the number of print subscriptions to most newspapers continue to decline. Meanwhile, Internet advertising is soaring. I don't think we know yet where that change is going to go and what it will mean for people who communicate,

know what it means for people who try to find ways to own the entities that provide the information stream. It's my hope that our committee and the Federal Communications Commission will look at all of the ways we need to pursue to preserve localism and diversity, and, as much as possible, try to understand the changes in the marketplace.

Thank you very much.

Senator DORGAN. Senator Stevens, thank you very much.

Senator Kerry?

**STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, thank you. And I thank the chair of the full committee for helping us to move down this road. I just have a brief comment I'd like to make, if I can.

We've been here before. There's a Groundhog Day component to what's going on here. And I guess when I think of the FCC chairman's recent comments on media ownership, we're all reminded of Ronald Reagan's famous line in the debate, "Here we go again." We have a different FCC chairman, but it appears that we are now headed down the very same ill-advised path, which we all understand where it leads to.

In 2003, the FCC issued rules designed to loosen restrictions on broadcast media ownership, and that decision was met, thank God, with a public outcry and a backlash that is rarely seen in the telecom and media world. And, in fact, the Congress itself was emboldened to move in a sort of rare repudiation—because it was then a Republican-controlled Congress—in a repudiation of its own administration.

At the time, I wrote the FCC chairman, opposing those changes, and several of us worked on a resolution to disapprove them, and the courts eventually recognized the dangers of those changes and pushed back.

So, fast forward, 4 years. We have a new FCC chairman, and now we have a new attempt to consolidate media, even though we have unfinished business at the FCC, business which Senator Stevens just referred to, on localism and minority ownership, which is critical to the overall mosaic of ownership and access to media in our country. We have an insufficient process, at this point, by which the public can even judge the changes currently being proposed.

So, little has changed in the approach of the Administration. I don't think that Americans are going to accept, nor should they accept, excuses in the future about unintended consequences that might come out of these changes. People have already seen too much, and they know too much.

The FCC chairman has announced—I think, relatively arbitrarily—that the Commission is going to vote on December 18. But what are they going to vote on? They haven't shared their thoughts with us, specifically, on the changes they'd like to make, or on the input that has been received regarding those changes, or the potential unintended consequences. And I think the FCC needs to know that that approach will not stand and the Congress is not going to allow it.

These rules influence the competitive structure of the entire industry, and they protect the public's access to multiple sources of information. Changes need to be considered with great caution and with diligence.

The ongoing proceedings that I've referenced are going to impact the media market. The localism proceeding and the proceeding on minority media ownership are topics that I've followed very closely. Senator Obama and I wrote a letter recently and introduced some concepts regarding it. But let me just very, very quickly point out the key points.

Mr. Chairman, in cities with large minority populations, such as New York, Washington, Atlanta, and New Orleans, there is not a single black-owned television station. Not one. Since 1998, there has been a 40-percent decline in the number of minority-owned broadcast television stations. So, who in their right mind can look at this and say that this is an acceptable direction to move in? Proceedings dealing with those very issues have to conclude, and we have to provide concrete and enforceable recommendations, before broader rules are contemplated.

The FCC's first responsibility is to ensure diversity, competition, and localism. It has no responsibility to facilitate the business plans of a major network or any other narrow economic interest. It has a public interest to respect and to enforce. And there is no doubt that the rules with respect to diversity and localism are going to have a very significant impact on that.

So, we've seen the consequences before, Mr. Chairman, and I think it's critical that, as the television industry continues to consolidate, as a handful of national networks acquire local stations across the country, that we guarantee that local and independent voices are not lost. It's critical to the kind of country that we are, and it's critical to the access to, and flow of, information.

Senator DORGAN. Senator Kerry, thank you very much.
Senator Smith?

**STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman.

Listening to my colleagues, I'm—I share many of their goals, and certainly recognize that localism and diversity and competition are all valuable. And we ought to look for things that we can do to facilitate that. And yet, we do it against the backdrop, not just of competition, but superheated competition, where so many of these traditional outlets, whether they're television, newspapers, or whatever, they're going under. They're going under. They're not profitable. And a lot of these things are cross-pollinating, if you will, because they have to, to meet a bottom line. And so, I think that is really the challenge we have. But I share the goal. But we can't demand the market perform in a certain way when the economics aren't there.

Senator DORGAN. Senator Lott?

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Well, thank you, Mr. Chairman, for having this hearing, and for requesting this hearing. And I have been pleased to join with you now in cosponsoring legislation that's being introduced today on this important subject.

This is an area that I've been involved in almost all my life and that I care very much about, and I'm very concerned about what is at risk with the localism and diversity and cross-ownership. I've expressed that. I joined you a few years ago, when we introduced that Resolution of Disapproval, and I'm prepared to do it again, if it's—if the FCC moves precipitously, without carefully complying with the full consideration of these areas of concern, and without some action that has been thoughtful and carefully developed. And I don't think they're there yet.

So—but, I think we did need—we're talking to the FCC, we're hearing from the FCC. I think it's important we hear from a different point of view. And so, I look forward to hearing the testimony of these witnesses.

Senator DORGAN. Thank you very much.
Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. And thank you for holding this important hearing.

And I, too, share a lot of the beliefs that my colleagues have expressed. And to my colleague from Oregon, who I respect very much, I guess I would say, about this issue and the consolidation that's happening in the market, is—a lot of consolidation is happening, big players taking over smaller players. And the one thing that I think our committee can do best in the next era of the Digital Age in media consolidation is to make sure that we look at the Constitution, and we look at our constituents, and we think about how we are protecting our constituents' rights and access to a diverse array of opinion. And I think that will be challenged, since most of the times our hearing rooms are filled with those who represent the business interests on both sides of these equations, but I think our constituents do deserve to have diversity, and that diversity protected.

I'd like to thank the panel for being here today, especially Mr. Frank Blethen, who is the owner of the *Seattle Times*. It is one of the few remaining major dailies in the United States that's independently owned, and owned by a local family, and the newspaper has been publishing in Seattle, in one form or another, for over 100 years, so they have been unique in continuing to speak out on this issue.

I believe that ownership of the broadcast and print media touches some of the most important American values: freedom of speech, open and diverse viewpoints, vibrant economic competition, and local diversity. And attention to that diversity and localism has served America well in expanding economic opportunity and energizing the civil discourse that's so important.

Diversity and localism promote competition and choices, even for advertisers. They create opportunities for small businesses, for minorities, for women. They improve innovation and find an outlet for a variety of voices. And I am troubled that I heard press reports that Chairman Martin intends to wrap up this current examination of the FCC's media ownership rule by December 18. I ask him, What is the hurry? The last media ownership public hearing is scheduled for tomorrow in Seattle, and there was only 4 days of notice provided, so I certainly support my colleague for calling into question this practice of giving the public very little notice on this issue.

Is the public going to get ample time to comment on any proposed rule before the Commission votes? There is a sense that the die has already been cast in favor of increased media competition, and that the new rules will eliminate the prohibition on broadcast/newspaper cross-ownership and further relax the local radio ownership cap. This is the wrong direction.

Diversity in media energizes our democracy. The viewpoint and program diversity is very important. Outlet diversity, source diversity, and, as I said, women and minority ownership diversity, makes us a stronger nation. And the importance of localism—that is, producing some of this programming within the communities so that the programming can be heard by the community's choices—is critically important. And, while increased media consolidation might be good for Wall Street, it is certainly bad for Main Street.

So, I hope that at this hearing today, we can pay attention to these issues.

I'd just like, Mr. Chairman, to point out one more statistic. That is because I think statistics sometimes are things we can all agree on and help us see a path. The cost of radio advertising has nearly doubled since the 1996 Telecom Act has passed. The Consumer Price Index has increased by 29 percent during the same period. So, in other words, while the Consumer Price Index increased by approximately 3 percent over the past decade, the annual growth rate of radio prices has increased approximately 10 percent. So, just imagine how that will increase if we continue to see further consolidation.

Again, thank you, Mr. Chairman, for holding this important hearing.

Senator DORGAN. Senator Snowe?

And then we will go the witnesses. I believe we have a vote, or votes, starting about 11:45. So——

Senator Snowe?

**STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Thank you. Yes, thank you, Mr. Chairman, and I'll move very quickly.

I appreciate the fact that we're having this hearing to highlight and underscore the whole likelihood of the FCC moving forward to, again—once again, to address the question of media consolidation and to pursue an ill-advised loosening of those restrictions regarding the consolidation of corporate ownership of media. And I think that that is truly disturbing. We've already been there. And it

seems like, “Here we go again,” in this pursuit of easing up on these restrictions and regulations where the U.S. Congress, the U.S. Senate—even the Third Circuit Court indicated its objection in the way in which the FCC pursued this in the past, because it had none of the data necessary or essential to underscoring and to buttressing their recommendations to ease up on these media rules and regulations.

And I want to welcome Frank Blethen here today, because he has been one who has effected national leadership in galvanizing the public’s attention on this question so passionately and eloquently. He owns newspapers in the State of Maine. As Maria indicated, it’s part of an independent, family-owned operation for four generations now, which is critically important, but really, I think, underscoring the perils and ramifications of further consolidation in the media marketplace.

So, after nearly 5 years, examining this question before the Committee—and the fact is, we rejected what the FCC did previously, when they sought to weaken those ownership restrictions. We passed a joint resolution in the Senate. We passed a statutory provision limiting the national ownership cap to 39 percent. And, as I mentioned, the Third Circuit Court of Appeals rejected the attempts at revising these rules as capricious and arbitrary, after finding that the FCC had no factual base in which to establish that.

So, it clearly is disturbing that the FCC would move pell-mell to move in this direction once again, without—insufficient information. And I would call everybody’s attention to the comments that were submitted to the FCC in response to the speculation about their attempts to revise these rules, but also on the basis of the ten studies, that there is a real question about the integrity of those studies, that they have not been peer-reviewed, a question of the methodology, a question of their research. And the consumer commenters submitted very extensive analysis of the FCC reports, and it’s clear that localism was not even regarded or considered as part of the overall process in what is going to happen to diminish localism and diversity in the media marketplace.

And so, I would urge that the FCC consider the comments that are made here today, but, most importantly, we do everything that we can to reject this attempt on one—on the question that we have revisited and rejected in the past.

Senator DORGAN. Senator Snowe, thank you very much.
Senator Inouye?

**STATEMENT OF HON. DANIEL K. INOUE,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Thank you very much, Mr. Chairman.

Yesterday, I had a meeting with Chairman Martin to discuss matters of diversity, localism, and competition, and stressed to him my strong belief that rushing to judgment before the end of this year would be a serious mistake. And, therefore, we have scheduled this hearing this morning to listen to the important independent voices of the industry.

We are scheduling a hearing with the Chairman and the Commission in December. I think it will be about the 13th of December,

but it has not been finalized yet. It should give the Commission sufficient time to listen to our voices, our concerns, and I hope they'll make the right decision.

Thank you very much, sir.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Let me begin today by stating that I am very troubled by efforts at the FCC to allow greater consolidation of our media. This is an area that requires tremendous caution, because the media is a tremendous force. It can inform, educate, and entertain, as well as nourish our democratic dialogue. Yet it also has less savory powers. In recent years, we have seen an increase in coarse and violent programming, but a decrease in local news and hard-hitting journalism. As our media grows more concentrated, we see less and less of the diversity of our Nation. When programming is the same from coast to coast, we risk having our airwaves no longer reflect the rich mosaic of our country and our citizens.

Four years ago, the FCC substantially relaxed the rules that govern media ownership in this country. Millions of Americans contacted the FCC to complain. The U.S. Senate voted to support a "resolution of disapproval" in response to the FCC decision. Next, the courts got involved, and the Third Circuit shipped the agency's handiwork right back to the FCC.

So we are back at square one. The FCC is poised to review its media ownership rules yet again. There are whispers, too, that the FCC may want to roll the rules back before the end of the year. So let me caution the agency now: we are watching. Rather than rushing to judgment on broad new rules, the FCC should focus on completing pending proceedings on localism and public interest obligations that have long languished for lack of attention. If rule changes are required, the American people deserve to be informed and provided a reasonable period of time for comment and discussion. I have discussed these matters with Chairman Martin, and have stressed my belief that rushing forward before the end of the year would be a serious mistake.

Against this backdrop, we hold today's hearing. It provides us with an opportunity to hear from our witnesses on the state of media ownership, localism, and diversity. I look forward to their testimony on this important topic.

Senator DORGAN. Mr. Chairman, thank you very much.

We have a very distinguished panel today, and we have five witnesses. We will begin with Mr. Alex Nogales, the President and CEO of the National Hispanic Media Coalition.

The prepared testimony from all of the witnesses will be included, as prepared, in the entire record of the Committee, and we would ask that the witnesses summarize.

Mr. Nogales, you may proceed.

**STATEMENT OF ALEX NOGALES, PRESIDENT AND CEO,
NATIONAL HISPANIC MEDIA COALITION**

Mr. NOGALES. Good morning, Mr. Chairman and members of the Committee. Thank you very much for the opportunity to testify.

My name is Alex Nogales, and I am the President of the National Hispanic Media Coalition. The National Hispanic Media Coalition is a 21-year-old nonprofit civil rights and advocacy organization created to improve the image of American Latinos as portrayed by the media, and to advocate for media and telecommunications policies that benefit the Latino community, as well as other communities of color.

I'm here today to deliver a message of profound importance to our community. It is simply this: the state of minority ownership in the American broadcast industry is in crisis. Our country is diversifying, but our media are not. More than a third of Americans

are people of color. Yet they own less than 3 percent of commercial television stations and less than 3 percent of radio stations, and these numbers are in decline. This is a dangerous and disgraceful situation. Ownership determines the content in our media system, and if the media structure rests on inequality, it will breed inequality in representation, culture, and politics. We cannot build a just society if the mass media remains in the hands of the few at the expense of the many. That is why the Congress instructed the Federal Communications Commission to promote minority ownership in 1996 in the Telecommunications Act.

But the FCC has neglected its responsibility. First, the FCC has never produced an accurate count of how many broadcast licenses are owned by people of color. It is hard to believe this could be the case, but it is.

Second, the FCC has long supported policies that permit further media consolidation, despite clear evidence that it shuts out minority broadcasters.

Third, the FCC has ignored instruction from Congress and the courts to advance the cause of minority ownership.

In short, minority ownership is in crisis, because the FCC does not seem to care about minority ownership and has done nothing meaningful to address the problem.

As we speak, the FCC is preparing to allow more consolidation at the expense, once again, of minority owners. Let me assure you that, while the FCC neglected this issue, communities of color have not, and will not remain silent, not ever again. More than 20 national civil rights organizations, including not only the National Hispanic Media Coalition, but also the National Council of La Raza, LULAC, Rainbow PUSH, and the Urban League, as well as numerous congressional leaders, have all called on Chairman Martin to support the creation of an independent task force that will address the issue of minority ownership before the Commission considers issuing new rules on media ownership.

Chairman Martin has rejected these appeals as he races toward a vote on new rules by year's end. His indifference is so brazen, because he knows such a study will demonstrate that media consolidations reduces minority ownership. And the Commission cannot support a policy of media consolidation and minority ownership at the same time, because they are in direct opposition. The severity of the problem cannot be brushed aside. Latinos comprise 15 percent of the U.S. population, but own just 15 of the more than 1,300 full-power commercial television stations. That is 1 percent. Radio is not much better. We own just over 300 of more than 10,000 radio stations, just under 3 percent, again.

Here's another disturbing example. A recent survey of media usage conducted by the FCC asked about media usage for minority groups, except for Latinos. This kind of oversight is symbolic of the agency's attitude towards the Latino community.

The FCC must not move forward with new ownership rules until it creates an independent minority ownership task force that is empowered to perform an accurate census on minority and female owners, as well as an analysis of the impact of these policy decisions on minority ownership.

Concentrated media ownership leads to media content that is harmful to communities of color. We have seen a rapid rise in hate speech on talk radio programs attacking the Latino community as a result of the debate over undocumented workers. You've all heard it, you know what I'm talking about. The megaphone offered to the odious brand of hate speech comes with the compliments of radio conglomerates that own hundreds of stations across the country. They are not accountable to their local communities and care little for the political and cultural impact of their programming.

Just look how fast these large companies put Don Imus back on the air, just months after making racist remarks about African-American women. Insults like the Don Imus racial slurs are also happening every day across and against the Latino community. But there is nothing but silence from the Federal Communications Commission. There is even one fellow, John Stokes, out of Montana, that is advocating for those that do not speak English to have an arm cut off, and that is very directly going against the Latino community.

Hate speech is a symptom of the larger disease of inequality in the ownership of broadcast stations. Undeniably, more diversity of ownership will result in more diversity of content. Let us not forget, it is the policy of this country to bring the diversity of broadcast owners into alignment with the diversity of the population. For too long, the FCC has made the situation worse instead of better. It is time for Congress, for all of you, to reverse this disastrous course and begin to take the country down the long road towards equality.

I thank you very much for your attention, and I look forward to your questions.

[The prepared statement of Mr. Nogales follows:]

PREPARED STATEMENT OF ALEX NOGALES, PRESIDENT AND CEO,
NATIONAL HISPANIC MEDIA COALITION

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to testify.

My name is Alex Nogales, I am the president of the National Hispanic Media Coalition. The National Hispanic Media Coalition (NHMC) is a 21-year-old non-profit civil rights and advocacy organization created to improve the image of American Latinos as portrayed by the media and to advocate for media and telecommunications policies that benefit the Latino community.

I am here today to deliver a message of profound importance to my community. It is simply this: the state of minority ownership in the American broadcast industry is in crisis.

Our country is diversifying, but our media is not. More than a third of Americans are people of color. Yet they own less than 3 percent of television stations and less than 8 percent of radio stations—and these numbers are going down, not up. This is not only a disgraceful situation, it is a dangerous one. Because ownership determines the content in our media system. And if the structure of media ownership rests on inequality, it will breed inequality in representation, culture and politics.

We cannot hope to build a strong and just society if the tools of mass media and representation remain in the hands of the few at the expense of the many. This is why the Congress instructed the Federal Communications Commission to promote minority ownership in the Telecommunications Act of 1996. But the FCC has ignored that responsibility. Its record of neglect is deeply troubling. Let me review the agency's track record:

First, the FCC has never produced an accurate count of how many broadcast licenses are owned by people of color. It is hard to believe this could be true, but it is true.

Second, the FCC has long supported policies that permit further media consolidation despite the clear evidence in the marketplace that it shuts out minority broadcasters.

Third, the FCC has ignored both the Congress and the Courts, both of which have instructed the agency to advance the cause of minority owners.

In short, minority ownership is in crisis because the Commission does not seem to care about minority ownership and has done virtually nothing meaningful to address the problem.

And now, it is happening once again. As we speak, the FCC is preparing to change media ownership rules to allow more consolidation. This policy will come at the expense, once again, of minority owners.

But let me assure you, while the FCC may have neglected this issue, communities of color have not been silent.

In response to the FCC's current drive toward media consolidation, more than 20 national civil rights organizations, including NHMC, the National Council of La Raza, the League of United Latin American Citizens, Rainbow PUSH, and the Urban League, as well as numerous congressional leaders have all called on Chairman Martin to support the creation of an independent task force that will address the issue of minority ownership before the Commission considers issuing new rules on media ownership.

But unfortunately, Chairman Martin has rejected these appeals. Instead he is racing full speed ahead with plans to make rules by the end of the year. He will do this despite the fact that his agency has never addressed the potential impact on minority owners. His indifference is so brazen that he has not even counted the minority owners!

He has refused to count minority owners and measure the impact of consolidation because he knows that any such study will demonstrate what we already know: media consolidation reduces minority ownership. You cannot have a policy that promotes media consolidation and minority ownership at the same time. They are in direct contradiction. Decision makers must all take a hard look in the mirror and make a choice. It is either one or the other. Ignoring this fundamental question is unacceptable.

The severity of the problem cannot be brushed aside. Latinos comprise 15 percent of the U.S. population. Yet Latinos own just 15 of the more than 1,300 full-power commercial television stations in America. That is 1 percent. Radio is not much better. We own just over 300 radio stations out of more than 10,000, just under 3 percent. This level of inequality is absolutely unsustainable.

The FCC cannot solve this problem with a minor course correction. We need a full rethinking of the Commission's priorities. Let me give you another disturbing example. In a recent survey of media usage conducted for the FCC by Nielsen, the agency simply forgot to ask about Latinos. They asked about every other minority group, but left out Latinos. This kind of oversight is symbolic of the attitude of this agency toward the Latino community.

This is why the FCC must not move forward with issuing new media ownership rules until it creates an independent minority ownership task force that is empowered to perform an accurate census on minority and female owners and then analyze the impact of policy decisions on minority ownership.

Concentrated media ownership leads to media content that is harmful to communities in color in so many ways. Let me give you just one example before my time is up that illustrates the point. In recent years, we have seen the rise in hate speech on talk radio programs attacking the Latino community as a result of the debate over undocumented workers. The megaphone offered to this odious brand of hate speech comes with the compliments of large, radio conglomerates that own hundreds of stations across the country. They are not accountable to their local communities, and they care little for the political and cultural impact of their programming behind the bottom line.

Just look how fast these large radio companies put Don Imus back on the air just months after receiving national shame for making racist remarks against African American women. Broadcast insults like the Don Imus racial slurs are happening everyday against the Latino community and there is nothing but silence from the FCC.

Hate speech is a symptom of the larger disease of inequality in the ownership of broadcast stations. Undeniably, more diversity of ownership would result in more diversity of content. Let us not forget it is the policy of this country to bring the diversity of broadcast owners into alignment with the diversity of the population. For too long the FCC has made the situation worse instead of better.

It is time for Congress to reverse this disastrous course and begin to take the country down the long road toward equality.

I thank you for your attention, and I look forward to your questions.

Senator DORGAN. Mr. Nogales, thank you very much for being here and for your testimony.

Next, we'll hear from Mr. Frank A. Blethen, who is Publisher and CEO of *The Seattle Times*.

Mr. Blethen, you may proceed.

**STATEMENT OF FRANK A. BLETHEN, PUBLISHER AND CEO,
THE SEATTLE TIMES**

Mr. BLETHEN. Thank you, Senator Dorgan. "There is freedom in a variety of voices. There is, I believe, a fundamental reason why the American press is strong enough to remain free. That reason is that the American newspaper, large and small, and without exception, belongs to a town, a city, at the most, a region. The secret of a free press is that it should consist of many newspapers, decentralized in their ownership and management, and dependent for their support upon the communities where they are written, where they are edited, and where they are read. There is safety in numbers and in diversity and in being spread out and in having deep roots in many places. Only in variety is there freedom."

These are the words of noted journalist Walter Lippman, spoken half a century ago.

I'm Frank Blethen, the Publisher of *The Seattle Times*. My family has lived in Seattle for 111 years. My family epitomizes the local connection Lippman so accurately cites as the foundation of our freedoms. We are accountable only to our local community and to our heritage with its paramount stewardship duty of independent journalism and community service.

Tragically, the essential localism and ownership diversity Lippman praises has been abandoned by Congress and by the FCC. Throughout America, in print and in broadcast, concentrated absentee ownership abounds. With it has come a disinvestment in journalism, causing serious erosion in America's public policy literacy and civic engagement.

The public knows something is wrong. When given the opportunity, they vehemently oppose media control. They plead for more localism and multiple voices, which are the very oxygen of their community and a healthy democracy.

As we witness the inevitable failure of the publicly traded and absentee ownership model which has come to dominate newspapers and broadcasts, America is at a crossroads. This committee has the opportunity to lead Congress down an enlightened path. You have it in your power to be the public servants Jefferson and Hamilton envisioned when they championed a free press as the essential fourth leg on the democratic stool.

You are told conglomerate owners need more consolidation because the business model is broken. Nothing is further from the truth. After decades of milking newspapers and TV stations for some of the highest pre-tax profit margins imaginable, often as high as 30 percent for newspapers and 50 percent for broadcast, it has become impossible for these financially driven owners to sustain these small margins.

We are simply going back to the future, when I started in the industry, 40 years ago, when newspapers were nice, locally owned, single-digit margin businesses, generating good cash-flow to operate the business and invest in journalism and community. And there is no reason to believe that local newspapers and local broadcasters can't continue to sustain successful businesses and fulfill their public mandate, going forward. Even today, amid the false claims you hear that the economic model is broken, the publicly traded newspaper sector is reporting 16 to 18 percent profit margins.

You have the opportunity to save our free and local press, to rejuvenate America's civic engagement, and to lay the foundation to preserve our democracy longer than any the world has seen. To do so, you must keep all current FCC ownership restrictions and public service mandates in place, including the all-important local cross-ownership ban. You must insist that the egregiously unenforced mandates of minority ownership, female ownership, and public-service air time be vigorously enforced. You must craft new FCC mandates to ensure Internet freedom. You need to institute a ban on cross-ownership of print and national broadcast outlets, as a companion to the local cross-ownership ban. You must boldly put forth limits on newspaper ownership, and create incentives and rewards for owners who invest in journalism.

I implore you to look to the future and create public policy which allows our Nation's free and local press to again thrive, and thus, ensure our democracy. This is a historical moment. The American citizen needs your leadership.

Thank you.

[The prepared statement of Mr. Blethen follows:]

PREPARED STATEMENT OF FRANK A. BLETHEN, PUBLISHER AND CEO,
THE SEATTLE TIMES

Chairman Inouye, distinguished Senators, thank you for the opportunity to share my perspectives with you today.

There is freedom in a variety of voices.

There is, I believe, a fundamental reason why the American press is strong enough to remain free. That reason is, that, the American newspaper, large and small, and without exception, belongs to a town, a city, at the most to a region.

The secret of a free press is that it should consist of many newspapers, decentralized in their ownership and management, and dependent for their support—upon the communities where they are written, where they are edited and where they are read. There is safety in numbers, and in diversity, and in being spread out, and in having deep roots in many places.

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- You need to institute a ban on cross ownership of national print and national broadcast outlets as a companion to the local cross ownership ban.
- You must boldly put forth limits on newspaper ownership and create incentives and rewards for owners who invest in journalism.

I implore you to look to the future and create public policy which allows our Nation’s free and local press to again thrive and thus ensure our democracy.

This is a historic moment. The American citizen needs your leadership. Thank you.



ILLUSTRATION: JULES WISCHMANN / THE SEATTLE TIMES

THE DEMOCRACY PAPERS,
EXAMINING THE ROLE OF MEDIA
IN OUR DEMOCRACY.

A lot has changed since the founding of our country. But one thing remains the same: A free and independent press is essential to our democracy.

With this great legacy in mind, The Seattle Times has created **The Democracy Papers**, an ongoing series of discussions by Seattle Times editorial writers and noted guest columnists offering a look at the state of the press today and the threat media consolidation poses to democracy.

Visit seattletimes.com/thedemocracypapers and explore the intersection of press and democracy. You'll find essays, columns, podcasts, editorial cartoons and a comprehensive list of Web resources — plus the opportunity to add your voice to the discussion. All brought to you by the locally owned and independent Seattle Times.

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The Democracy Papers—September 9, 2007

FASTEN YOUR SEAT BELTS: FULL-SPEED MEDIA AHEAD

By James F. Vesely, *Seattle Times* Editorial Page Editor

The American press is often reluctant to report on itself, but the overwhelming trends in media consolidation and in fragile instruments of democracy such as low-power radio lead these opinion pages to a series of editorials and essays titled “The Democracy Papers.”

The media are much talked about but rarely read about in the country’s newspapers. Yet, the press—a better word than “media”—is the coaxial cable that runs through the heart of the country and keeps us in touch with each other.

That voice and its counterpart, the public ear, have evolved into a cacophony of sounds and images, exactly what the Federal Communications Commission warned of when it first established government as the umpire of the Nation’s airwaves. The

umpires are long gone from the world of blogging, podcasting, text messaging, 24/7 news cycles and community channels. The thud on the front porch that is the newspaper at 5:30 a.m. is a delivery system of the 19th century, now sophisticated enough to give near-precise directions for every paper sent flying through the dawn.

But delivery is not message and message is not the same as content. The press and democracy are one interlocking tree and root system, but its branches are spreading and the cost of keeping single voices independent and in the sunlight is becoming high.

The series begins today with an essay from FCC Commissioner Michael J. Copps, who begins the narrative with an important government meeting, closed to the media, that produced a 5,000-word document that is known as the U.S. Constitution.

Since that storybook time, the role of the media in America has been embellished by technology, but its function should—and must—stay the same.

In the coming weeks, we will test that theory, that a free press is waning in America and with it the strength of our democracy. Writers on media consolidation, the music industry, the role of the press as unofficial signatory to democratic government, and the future of broadcast and print will be examined in editorials and guest essays.

Monday's opinion pages will continue the examination of the role of the FCC with an editorial about the commission's failures, and an essay by Edwin C. Baker, professor of law at the University of Pennsylvania and author of "Media Concentration: Why Ownership Matters."

The Seattle Times' editorial pages will have reports on how democracy fares with or without a free press in Uganda, China and Russia. We will examine how journalism is taught at the college level and look back at the scoops and blunders of Northwest journalism in the years of Seattle's booms and busts.

Finally, the series will examine open government in our state. A new oversight committee is supposed to do just that—yet the editors of broadcast and print news all over Washington understand government's innate and almost unconscious resolve to protect itself from critical news stories.

The press's mutual dependence on government, big-league sports, business interests and organized labor for news and information has been disrupted—often for the good—by the individual journalist, a blogger with a keypad. We will profile some of them and try to understand their frustrations and anger with America's press.

It's a big sloop and it will take us several months to try to tell this story and shape some opinions about it. But it begins now.

The Seattle Times—September 9, 2007

THE NEWSPAPER'S VIEW, DEMOCRACY, THE PRESS AT A CRITICAL JUNCTURE

American democracy is suffering. The natural strain on our political system after more than two centuries is accelerating with the purposeful weakening of the press.

This erosion has been fueled in recent decades by politically calculated legislation, and regulatory agencies not regulating. Political aggression coupled with bureaucratic acceptance has led to the massive consolidation of American and global media.

The Federal Communications Commission can realign democracy with the Founders' vision by acting in the public's interest on a number of issues, such as network neutrality, cross-ownership and broadband. If the FCC missteps, the United States is in danger of losing its independent news organizations.

The press—newspapers, radio, television and magazines—plays a role in democracy every bit as important as Congress, the Executive Branch and the judiciary. That watchdog role is in danger now that newspapers, which are the driving force behind most original reporting, are being strained by consolidation.

Why should Americans care who owns the press?

Because a democracy ceases to be a political system that promotes liberty when the press is muzzled.

Ownership still matters. The corporatization of news has laid bare how woefully unwilling strictly market-driven conglomerates are to fielding aggressive news organizations with a public-service mission.

Citizens should look at the press as part of democracy's structure. When viewed through this lens, it becomes apparent that a national discussion is needed about the press, its function, who owns it, and what can be done to ensure it stays vital and independent.

The courts and the FCC have historically recognized the importance of the press and its relation to democracy. Rulings such as the *Associated Press v. United States*

in 1945 and *New York Times Co. v. Sullivan* in 1964 demonstrated the court's position. These rulings are now part of a sentimental past.

In 2003, the FCC voted to loosen the rules governing cross-ownership so that one company could own a newspaper, three television stations, eight radio stations and an Internet service provider in the same market. The commission bucked millions of public comments against such an undemocratic arrangement.

Thankfully, the courts put the FCC's plan on hold. Unfortunately, the U.S. 3rd Circuit Court of Appeals did not completely block the new rules. The court sent the rules back to the FCC to be reworked. Lifting the ban is still a possibility. Even though the FCC has a new chairman since the 2003 debacle, the majority Republican commission has indicated it likes the idea of big media as a complement to big government.

The government's penchant for bigness is obvious. Radio has been consolidated to minuscule numbers of owners who favor generic play lists. Adding to the corrosion of American creativity is the loss of radio news—too expensive for the big companies. The gutting of local radio has also blocked minorities and women from the most accessible entry point to media ownership.

Television news has devolved into a cliché. Weather, crime and car accidents fill airspace that was once the domain of substantive reports from city hall and the capitol. The trends have not been much kinder to newspapers. The majority of readers need a score card to keep track of which corporation owns their newspaper.

The press is going through a radical transformation. The old way of doing business is dead. Press opponents know this, and are spending a lot of money in Washington to transform the news into a commodity every bit as purchasable, and saleable, as toilet paper.

The Federal Government has largely failed to protect an independent press. Instead, policies have been tailored for big corporations that are blindly beholden to the market, and increased quarterly profits.

Democracy does not simply happen. It requires nurturing. It needs the public to be aware of assaults against it, small and large. The courts must rebuff debilitating press laws, and politicians should champion media reform.

It is not too late. American democracy and the press are at a critical juncture. What started as a boisterous grand experiment powered by the pen, has become background noise to American life. Democracy's frequency has to be returned for all to hear.

The press—its state, and how it can be saved—is the right place to begin the discussion.

The Seattle Times—September 9, 2007

DEMOCRACY AND MEDIA, DO WE CURRENTLY HAVE A SYSTEM THAT WOULD MAKE OUR FOUNDING FATHERS PROUD?

By Michael J. Copps, Special to *The Seattle Times*

An important government meeting was once called but closed to the media. The assembled leaders produced a 5,000-word document, finalized early enough to be manually typeset by the close of the proceedings.

Within weeks, it was reproduced by newspapers in every state. It came to pre-occupy the Nation's signed and unsigned editorialists, as well as its political reporters. It prompted conventions across the nation—which we know far more about because they were all open to the media.

The document was ultimately endorsed with some additions, most notably language addressing the role of journalism in a free society.

The document is of course the U.S. Constitution, the string of anonymous op-eds is now known as the Federalist Papers, and the little-debated addition is the First Amendment.

James Madison's original draft in the House of Representatives spoke of the press as one of the "great bulwarks of liberty," echoing language first put forth by the Virginia ratifying convention. But Congress adopted the more economical formulation we know today.

It is enormously revealing that our Nation's popular press literally predates our foundational political document, and played a key role in its formation. After all, in Europe, where the power of government remained solidly in the grasp of elites at the end of the 18th century, there was no obvious need or demand for a popular press covering—let alone criticizing—the acts of government. But in a democracy—where every citizen is allowed and expected to vote—a professional, independent, objective media is fundamental.

Today, the U.S. is vastly more powerful and richer than in the heady days of Madison and the Constitutional Convention. But do we currently have a media system that would make our Founding Fathers proud?

I fear not. We have a system that has been buffeted by an endless cycle of consolidation, budget-cutting, and bureau-closing. We have witnessed the number of state-house and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. As the number of channels has multiplied, there is far less total local programming and reporting being produced. These days, if it bleeds, it leads.

Interested in learning about local politics from the evening news? About 8 percent of such broadcasts contain any local political coverage at all, including races for the House of Representatives, and that was during the 30 days before the last Presidential election.

Interested in how TV reinforces stereotypes? Consider that the local news is four times more likely to show a mug shot during a crime story if the suspect is black rather than white.

What has caused this appalling degeneration of our media? One factor, I am ashamed to say, is the abdication of responsibility by regulators at the Federal Communications Commission. We allow the Nation's broadcasters to use spectrum worth billions of dollars, supposedly for programming that serves the public interest.

Once upon a time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every 3 years before renewing the license. But during the market absolutism of the Reagan years, we pared that down to "postcard renewal," a rubber stamp every 8 years with no substantive review.

It is time to do better. The FCC needs to reinvigorate the license-renewal process. We need to look at a station's record every three or four years. And let's actually look at this record. No more rubber stamps. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, have these owners met with local leaders and the public to receive feedback?

Another factor is the FCC's woeful record of stepping aside to allow wave after wave of consolidation in the broadcast and print business. Though there are rules on the books designed to prevent too much cross-ownership of TV, radio and print properties in a single market, we have not enforced them with the rigor they deserve.

Far more troubling was what the FCC tried in 2003—over my strong objection—to relax the cross-ownership rules. The agency actually voted 3–2 to allow a single company to own up to three TV stations, eight radio stations, the daily newspaper (a monopoly in most towns), the cable system and the Internet service provider.

Thank heavens Congress and the courts stepped in to overturn that terrifyingly bad decision. But now the agency is considering changes to these very same rules.

I say this is hardly the time to rush headlong into more of what we know has not worked given the wreckage caused by our decades-long flirtation with the notion that Wall Street always knows best when it comes to journalism.

As the FCC and America move forward into the brave new world of media in the 21st century, I hope we can agree the public interest is not just another way of saying "corporate profit maximization."

President Franklin D. Roosevelt, my personal hero, once said in a letter to newspaper publisher Joseph Pulitzer, "I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room."

The same is true of broadcast journalism. Consider the fact that the existence of local news in Spanish in a market can boost election turnout among Spanish speakers by more than 10 percent. No dollars-and-cents calculation is going to take account of that extraordinary boost to our Nation's democracy.

If technology and changes in the economics of the news business have made the old ways impossible, we need to find new ways to develop a media system that can serve democracy. That is not a luxury, it is a necessity.

I take great comfort from the conclusion of another critic of the current media system, Walter Cronkite, who said, "America is a powerful and prosperous nation. We certainly should insist upon, and can afford to sustain, a media system of which we can be proud."

Let's work together to show that it can be done. Our democracy demands it.

THE NEWSPAPER'S VIEW, FAILURES OF THE AMERICAN AIRWAVES

The Federal Communications Commission has failed the people and the democratic system it is supposed to protect.

The many failures reached ridiculous heights in 2003 when the majority Republican commission split along party lines to gut the cross-ownership ban. The change would have allowed a single company to own a newspaper, three television stations, eight radio stations and an Internet service provider in the same market.

The sinister move did not go unnoticed. The FCC was flooded with 3 million comments. Clearly, the American public is attuned to the threat media consolidation poses to democracy.

America's press, and other sectors of the media, will continue to be marginalized unless politicians act on the currents of energy created by the growing media-reform movement. Politicians, both Republicans and Democrats, should push back on the FCC.

The FCC can act on a number of issues that will quickly begin the revival of an independent press and a healthy democracy.

Cross-ownership. The bloating of the world's media conglomerates begs lawmakers to reexamine this rule. Not only does it need to be better enforced, the rule needs to be expanded on a national level. No company should be allowed the reach and power of News Corporation. The FCC has to be alarmed that the conglomerate now owns the New York-based *Wall Street Journal*, Fox News, two television stations and a daily newspaper in the city. News Corporation is also launching a national financial channel.

Licensing. The FCC should use a licensing program requiring television stations to go through a rigorous renewal every 3 years. The current system has almost no impact, and renewal is done every 8 years. Stations simply send in a postcard.

Network neutrality. This awkwardly named proposal would keep network providers—such as AT&T or Comcast—which supply the pipes through which the Internet moves, from implementing different pay scales for different levels of service. This law would ensure the Internet remains a place for innovation and is not controlled by the companies that own broadband.

These are just a few actions the FCC and lawmakers could take to perpetuate the press's indispensable role in a democracy. It is time the FCC acted in the best interests of the people it was created to serve, instead of large corporations.

The Seattle Times—September 10, 2007

DISPERSED MEDIA OWNERSHIP, SERVES DEMOCRATIC VALUES

By C. Edwin Baker Special to the *Seattle Times*

The Federal Communications Commission is considering whether to reduce restrictions on broadcast-station ownership, an action that would permit greater media and press concentration.

This is a bad idea. Bad for audiences, for citizens, and for democracy. Dispersed media ownership, ideally local ownership, serves democratic values, while conglomerate ownership and media mergers, which would be the result of reduced ownership restrictions, do the opposite.

Equality—one person one vote—provides the proper standard for the distribution of power and voice in a democracy. Maximum dispersal of media ownership can enable more people to identify a media entity as in some sense speaking for and to them.

Dispersed ownership also reduces the danger of inordinate, potentially demagogic power in the public sphere. As the FCC once recognized, many owners create more independent decisionmakers who can devote journalistic resources to investigative reports. Finally, dispersal reduces—without eliminating—potential conflicts of interests between journalism and an owner's economic interests.

In contrast, media mergers put papers and broadcasters into the hands of executives whose career advancement depends on maximizing profits. Mergers require owners to squeeze out more profits to pay off debt created by the high bid made to secure the purchase. As too many recent examples show, the most consistent method to reduce expenses is to fire journalists.

Smaller owners, free from the financial burden of paying for mergers, have more room to maintain a commitment to quality. They can be interested in how their paper contributes to their community, not merely to their family's wealth. While certainly not true in every case, research shows that, holding other factors constant,

smaller owners tend to hire more journalists and commit more resources to journalism than do the conglomerate owners.

For the media to have a single-minded emphasis on the bottom line is dangerous for democracy. Unlike many companies whose main business is providing individual consumers with goods they value, the press provides value to the public at large. Non-readers benefit when the press identifies government corruption or corporate malfeasance. News organizations that practice aggressive investigative reporting can benefit the public without even producing a story to sell readers when their reputation for reporting deters wrongdoing.

Of course, the newspaper does not profit from providing these benefits to those who do not purchase the paper. Papers concerned primarily with profits have inadequate incentives to provide this kind of beneficial journalism. Only a commitment to traditional journalistic values leads to the commitment of the journalistic resources necessary to provide this public good.

It is precisely because the press can provide the public with these kinds of benefits that it is the only private business to receive special constitutional protection. This explains why the FCC has long restricted concentration of ownership of broadcast stations and the cross-ownership of a local broadcast station and a newspaper within a community.

Large media companies often claim that any restraint on their freedom to merge violates their rights under the First Amendment. But in writing for the Supreme Court, Justice Hugo Black, famous for his absolute commitment to the First Amendment, rejected this claim, stating: "Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom . . . Freedom of the press . . . does not sanction repression of that freedom by private interests."

The Supreme Court strikes down any law censoring what the media can say. At the same time the court consistently follows Black's logic by upholding any law that can be reasonably defended as furthering a more democratic structure of the press.

Rather than reduce restrictions on media ownership, the FCC should expand ownership restrictions and create regulatory preferences for more diversified and more local ownership.

The FCC or Congress could extend the ban on cross-ownership to prohibit ownership both of a national newspaper or a large newspaper chain and of a national broadcast or cable network. This rule would, as it should and constitutionally could, require undoing the recent purchase by Rupert Murdoch's News Corporation of *The Wall Street Journal*.

Widely dispersed ownership of independent media serves both democracy and the First Amendment. It embodies a commitment that is good for everyone in a democratic society.

C. Edwin Baker, author of "Media Concentration: Why Ownership Matters," is a professor of law at the University of Pennsylvania.

The Seattle Times—September 16, 2007

THE NEWSPAPER'S VIEW . . . BUILD BROADBAND

The Internet is an important conduit to commerce and innovation, a medium that has wildly exciting communication potential. Yet, the United States' paltry broadband network lags behind most of the industrialized world. Our weak Internet infrastructure not only puts the Nation at a competitive economic disadvantage, it threatens democracy.

Japan and South Korea have cheaper Internet service that is many times faster than that in the U.S. To get an idea of how far behind Japan we are, think of our network as a Soviet-era grocery store and Japan's as Whole Foods.

At least a dozen countries have zipped by America because of smart government regulations that encouraged the build-out of networks and promoted competition. It is time Congress and the Federal Communications Commission did the same.

A national discussion about what we want, and need, for the Internet of the future is part of the solution.

Should it be treated like the airwaves, which belong to the public? Can network providers like AT&T be forced to allow broadband startups onto their lines? Could a system modeled after public utility districts help broadband reach areas that are not attractive to network providers?

So far, the discussion has been defined by lobbyists for the telecom and cable companies, which have spent many millions of dollars opposing network neutrality and

any legislation that would force competition. How much will their networks be worth if all the brightest minds migrate to where their talents can contribute to society and be monetized? Americans should be worried about the current level of service. This is a serious problem that goes beyond the annoyance of slow-loading Web pages. Many rural and poor areas still use painfully slow dial-up Internet connections and will not get broadband anytime soon. Those with no access, or prohibitive access, will be silenced as more communication, services and news media jump to the Internet. Not only does the U.S. risk falling behind its partners and competitors, a large swath of American voices will disappear if broadband is left to network providers. That's a great loss for a democracy.

The Seattle Times—September 16, 2007

THE NEWSPAPER'S VIEW, FREE THE INTERNET. . .

Democracy is meaningless without structure. It requires support and infrastructure to become a word capable of giving entire nations voice and freedom.

The architects of America's democracy knew this. The Founding Fathers made sure newspapers and magazines were widely distributed by allowing periodicals to utilize low postage rates. Technologies like the airwaves, which were enshrined as the public's ownership, have also been federally regulated to be used as democratic tools.

Lawmakers have another opportunity to use technology to bring the Nation's democratic discussion to more people. The Internet has become home to modern-day pamphleteers, community discussion and innovation. Like any valuable resource, the Internet is in need of protection.

The Federal Communications Commission and Congress can provide this by passing an Internet-neutrality law. Congress can act this fall on a net-neutrality bill sponsored by Sen. Olympia Snowe, R-Maine, and Sen. Byron Dorgan, D-N.D., that is before the Commerce Committee.

Working against such common-sense legislation are corporations such as Comcast, Verizon and AT&T. These corporate octopuses vehemently oppose any laws that will erode their considerable influence as network providers.

The legislation seeks to prevent companies from manipulating the content that flows through the networks they have built. Currently, there is nothing stopping Comcast from slowing down content it did not create or from degrading content from competitors. AT&T illustrated the danger when it deleted comments made by Pearl Jam singer Eddie Vender during a concert webcast through its Blue Room Website.

Constructive regulation is needed to allow the Internet to grow and mature. It has the potential to connect people from the country's remote corners to residents of the biggest cities. The Internet is a place where ideas catch fire, where like minds find refuge and debates can rage. The Internet cannot belong to a couple of gigantic corporations. A handful of telecommunication and cable companies should not be entrusted with something as precious as our diverse, national dialogue.

The Seattle Times—September 26, 2007

THE LOCAL VOICE OF RADIO HAS BEEN MUFFLED BY GREED

By Bill Wippel Special to *The Seattle Times*

Local radio stations, left independent, are the best examples of freedom and democracy. Most are located in small markets where they mirror the community's image.

Take Pullman. Station KOFE in 1964 decided to turn over the entire station's proceeds for one day to the local chamber of commerce, chamber members bought spots and wrote their competitors' commercials and read them over the air.

Seafirst Bank wrote: "Pullman National Bank has a clock out front because inside they won't give you the time of day!" and, Pullman National bank wrote: "You think that thermometer out front gives the temperature? No, it's Seafirst's rate of interest." (The broadcast was made in July when the thermometer read 85.)

In all that fun, including newscasts read by chamber members complete with botched pronunciations and laughter, \$4,000 was raised. It bought most if not all of the Christmas decorations for the town.

Earlier, in Pomeroy, Garfield county, which does not have a radio station, KOZE in Lewiston, Idaho, broadcast a play-by-play description of the Pomeroy Day Parade.

The big news was that an area farmer had paid cash that day for a new Edsel. Interviews of local folks made them “famous” in that small farming community!

Genesee, Idaho, never had a station, either. But once a year, Pullman’s KOFE did a broadcast from the farming community from 6 a.m. to 6 p.m. for Genesee Days. No other commercials were broadcast except those from Genesee. Crowds were huge.

Interviews with city leaders, farmers and business owners told of the small town’s pride and joy: wheat farming and soil conservation.

Owners of large radio conglomerates today would call this “hokey.” They would also call this exercise “looking back, when we should be looking forward.” Today, many broadcasters exhibit just the opposite of community resourcefulness. There are exceptions, but they are few and far between.

There are radio stations located in the Seattle area that have left their original City of license. Stations that used to broadcast the hometown news and community events of suburban King, Pierce and Kitsap counties now involve themselves almost solely with Seattle or some other nonlocal focus.

None of this is illegal, thanks to the Federal communications commission. The FCC has watered down what is required to receive a radio—* broadcast license. Each station can renew its license by just a postcard. No promise of news, community involvement or public service is necessary to renew its license.

Proponents of further relaxation of FCC broadcast rules argue that we have so many news venues that democracy is in good health.

Not when a few own so much of the media.

Imagine if Rupert Murdoch, coming off his acquisition of *The Wall Street Journal*, added our local press or radio and television stations to his worldwide stable of traditional and new media. Where would we turn for diversity of coverage in news, sports and opinion? It would be a catastrophe for the Puget Sound region.

We have allowed greed to replace enterprise. We have allowed the local voice of radio, for all intents and purposes, to be stifled.

Guglielmo Marconi must be rolling in his grave. The voice of democracy and independent thought on radio are all but dead.

Bill Wippel of Normandy Park has been in radio for 58 years and is a former owner of KOFE in Pullman. He now directs Tape Ministries NW, a nonprofit lending library of Christian books on tape for blind and sight impaired people, www.tapeministries.org.

The Seattle Times—October 3, 2007

FCC FIDDLES WHILE NATION’S BROADBAND FALLS BEHIND

By John Muleta Special to *The Seattle Times*

As the economy of the mid-20th century boomed, government action to provide consumers with free over-the-air television and radio changed forever the way Americans engaged in the life of their nation.

For the first time, news and entertainment from around the corner and around the world were delivered directly into our living rooms. America became a truly interconnected society as our country’s perspective on events like the civil-rights movement and the Vietnam War were defined by the widespread adoption and availability of free consumer communication services.

In the 21st century, broadband has the potential to similarly reshape our democracy through the interactive power of the Internet. Unfortunately, there is growing evidence that the current Federal Communications Commission (FCC) is failing the American people in maximizing use of the airwaves to serve the “public interest.”

When it comes to broadband communications, the FCC’s policy is to consistently favor media megaconglomerates by throwing up roadblocks to competition and failing to protect consumers. The FCC has protected entrenched incumbents by building an obstacle course for innovative new entrants.

While the FCC coddles AT&T and Verizon, more than 100 million adults and their children still do not have broadband connections, and our country has fallen to 24th in the world—behind Estonia—in global broadband-adoption rankings.

Congress has found that broadband services in the United States are delivered by a duopoly of incumbent telephone and cable companies, leading to high prices and low adoption rates. Prices for broadband have only declined 10 percent over the past decade while prices for computing have dropped by more than 90 percent. Computer makers are regulated by the marketplace, while broadband providers are regulated by the FCC—and therein lies the problem.

The result is that broadband adoption has stalled at below 50 percent while the economic and racial disparities in connectivity have grown. In America today, poor, rural and black families have broadband service at half the rate of their rich, suburban and white counterparts. This is un-American and unacceptable.

Given this sad state of affairs, one might assume the FCC would be open to considering new and innovative approaches to using America's airwaves to spur broadband adoption. Sadly, this is not the case.

The experience of my company, M2Z Networks, is an example of how hard it is for innovative ideas to enter the marketplace. Backed by the same Silicon Valley innovators that brought you Amazon.com and Google, we proposed to build a free, fast and family-friendly nationwide wireless broadband Internet network without a government subsidy. Such an innovative service would be an unprecedented step toward breaking down the socioeconomic barriers that divide our country and extending the great opportunities of broadband into the homes of every American family.

Of course, these networks require licenses from the FCC to use the public airways. After 16 months of inaction, the FCC recently announced that it would need more time to consider our proposal—despite 50,000 Americans and hundreds of Federal, state and local officials telling the FCC that our service was in the public interest.

Despite this overwhelming public support, the FCC sided with seven incumbent telephone companies that said a slow decision on our license application was in the public interest.

The real issue when it comes to broadband is that America's airwaves are managed by an FCC that is content to fiddle while American broadband falls behind.

The FCC's duty is to serve the public interest by promoting competition and protecting consumers through the use of the "public" airwaves. It is high time the FCC act in the public interest of American consumers and stop acquiescing to the special interests of incumbent phone companies and media conglomerates.

John Muleta is co-founder and CEO of Silicon Valley-based M2Z Networks (www.m2znetworks.com). He is a longtime Internet and telecommunications entrepreneur who also headed the FCC's Wireless Telecommunications Bureau between 2003 and 2005.

The Seattle Times—November 4, 2007

THE NEWSPAPER'S VIEW, HEADLONG INTO THE MURK OF MEDIA

The Federal Communications Commission must slow down. Nothing good can come from squeezing major changes to the laws that govern media ownership by year's end.

FCC Chairman Kevin Martin wants a vote on media-ownership rules by Dec. 18. Never mind that the FCC has not held its required sixth and final hearing on media ownership. That hearing is now scheduled for Seattle on Nov. 9.

Expect the hearing to be a rushed affair. An FCC hearing to explore how broadcasters are serving communities was announced at the same time as the Seattle media-ownership hearing. The broadcaster—or localism—hearing was finalized the night of Oct. 24, giving the public only five business days to prepare. The localism hearing was not only degraded by its timing, but also by its venue. The hearing was tagged onto the end of a regularly scheduled FCC meeting on Halloween.

There is no logical reason for Martin to be in such a hurry other than to work something out for the sale of media conglomerate *Tribune* to Chicago developer Sam Zell. Zell wants the deal to go through by the end of the year. He also wants the deal to include *Tribune's* television stations, many of which operate in the same cities as its newspapers.

The current FCC cross-ownership ban bars a company from owning a television station and newspaper in the same city. *Tribune* has been able to operate in a number of cities under the ban with a waiver that does not transfer with the sale.

It is reasonable to believe Martin will be pushing the Commission to drop the cross-ownership ban. In 2003, he voted with the former Chairman Michael Powell to allow a company to own in one market a newspaper, a television station, eight radio stations and an Internet service provider.

These rule changes prompted the public to act through a court challenge. The FCC was flooded with nearly 3 million letters in opposition to the changes. Then, the 3rd Circuit Court of Appeals in Philadelphia sent the rule changes back to the FCC.

The FCC should be more concerned about structuring rules that ensure an independent and diverse press and media, and not so worried about appeasing the con-

glomerates that believe a cross-ownership ban is standing in the way of more revenue.

This is too important an issue to be rushed. The FCC needs to facilitate a national discussion about how the American press and media can best serve democracy. That cannot be achieved by Dec. 18.

The Seattle Times—November 4, 2007

THE NEWSPAPER'S VIEW, DEFY NEWS CORP.

News Corporation's purchase of Dow Jones signals a frightening new phase of media ownership that demands scrutiny.

At least one person in a position to do something about it agrees. Michael Copps of the Federal Communications Commission sent a letter last week to FCC Chairman Kevin Martin asking that the commission take a hard look at the sale of Dow Jones, which includes The Wall Street Journal. Copps says that News Corporation's extensive media holdings should be of concern. He is right. News Corporation's media holdings are too prodigious for a democracy.

Unfortunately, it is not clear whether the FCC can do anything about it. Martin is not likely to try to hold up the deal, and the FCC does not have a nationwide cross-ownership rule that would prohibit a company from simultaneously owning a national newspaper and a national news station.

Just because there is no ban does not mean there should not be one. The American press and media have been condensed into the grip of a handful of companies. Rupert Murdoch's News Corporation already owns everything you watch with the word FOX in the name. He also owns Direct TV, MySpace, TV Guide and HarperCollins Publishing.

The acquisition of Dow Jones will solidify News Corporation as the dominant news voice in New York City, and across the country. Nationally, the Murdoch conglomerate will own the New York-based *Wall Street Journal*, FOX News, and a soon-to-be-launched financial channel. News Corporation already owns two television stations and a daily newspaper in New York City.

The FCC should listen to Copps. News Corporation, or any company, for that matter, need not have such a dominating media presence. It is time the FCC expanded its local cross-ownership ban nationally to ensure Americans are served by a dispersed, diverse press and media.

Senator DORGAN. Mr. Blethen, thank you very much for your testimony.

Next, we will hear from Mr. Tim Winter, who is President of the Parents Television Council.

Mr. Winter, you may proceed.

**STATEMENT OF TIMOTHY F. WINTER, PRESIDENT,
PARENTS TELEVISION COUNCIL**

Mr. WINTER. Good day, Senator Dorgan, Chairman Inouye, Mr. Vice Chairman, and Senators. Thank you for inviting me to be here with you this morning. It is a personal honor for me to be here once again before this committee on whose staff I had the pleasure to serve under your good friend and former colleague Warren Magnuson.

My name is Tim Winter, and I'm president of the Parents Television Council, with more than 1.2 million members across the United States. The PTC is a nonpartisan, nonprofit, grassroots organization dedicated to protecting children and families from graphic sex, violence, and profanity in entertainment.

At first blush, there would seem to be very little connection between the PTC's mission and the media ownership issues which bring us here together today, but there is compelling evidence that the consolidation of media outlets has led to a coarsening of television content, a destruction of the concept of community standards

of decency, an unresponsive, irresponsible news media that routinely ignores news stories to protect its parent corporation, and a cable television industry that effectively functions as a cartel.

Mr. Chairman, a few years ago the PTC stood shoulder to shoulder with a remarkably diverse group of public policy advocates to decry the loosening of media ownership rules—the National Organization for Women and Concerned Women for America, the Salvation Army and Common Cause, Consumers Union, the National Rifle Association, MoveOn.org, and others. As PTC founder Brent Bozell noted at that time, when all of us are united on an issue, then one of two things has happened; either the earth has spun off its axis and we’ve all lost our minds, or there is universal support for a concept.

I believe the FCC’s recent localism hearings across the country have once again demonstrated universal support for a concept. Big media companies have not conducted themselves in a manner which merits them owning even more media outlets. The strongest voices in favor of allowing big media companies to grow even bigger have come from those within those very companies.

Let me explain why the ownership issue is so important to the Parents Television Council:

With very few exceptions, network-owned television stations do not consider community decency standards, even though the terms of their broadcast licenses demand it. During the summer of 2003, the FOX Broadcasting Network aired an episode of a crime show called “Keen Eddie,” where criminals trying to sell horse semen on the black market hired a prostitute to perform a particular act on the horse in order to extract the semen. Although the act itself was not displayed on the program, the dialogue was so coarse that I am uncomfortable mentioning it here to you today. A member of the PTC in Kansas City wrote a letter to the FOX-owned and operated television station in his market, expressing his concern, and I wish to read aloud the response he received from the station’s general manager, quote, “We forwarded your letter to the FOX network. The network, not the station, decides what goes on the air for the FOX-owned and operated stations.”

When station general managers in cities and towns across the country take their orders directly from headquarters in New York or Hollywood, it comes as no surprise that they would toe the company line with programming decisions. How does this serve the public interest?

We have heard repeatedly and privately from independent local broadcasters around the country who are threatened, by the major networks, that they will lose their affiliate status if they preempt network programming. Fortunately, there are a few notable exceptions of broadcasters pushing back on the networks, including Mr. Goodman here and others like Pappas Communications. But when local programming decisions are dictated or prohibited by corporations thousands of miles away, the public interest cannot be served.

Media consolidation has led to a self-serving news media that seeks to protect interests of their own corporate parents. When the broadcast networks recently challenged the FCC’s ability to enforce indecency standards, they convinced two Federal judges in New

York City that they have the right to air the “F” word at any time of day, even when they know millions of children are watching.

Although dozens of concerned family groups, including the PTC, were shocked that a court could reach such a preposterous conclusion, there has been only limited public outcry over that decision. The reason for this is simple. In large measure, the American people don’t know that it has happened. In the wake of that court decision, not a single national news broadcast organization saw fit to cover the story, and, even with a host of 24-hour-a-day news channels on cable, there was near-zero coverage of a decision that will impact every family in the country, as well as the policies determining appropriate use of the airwaves that they themselves own.

Why no coverage? We believe that the corporate news divisions knew the public would be incensed by the arrogance of a media conglomerate arguing for the right to air profanity in front of their children early in the day over the airwaves that they own.

It should be noted that the Second Circuit “F”-word lawsuit and the now-pending Third Circuit lawsuit, which alleges that the Janet Jackson Super Bowl striptease was not indecent, were not brought by local broadcasters, like Mr. Goodmon here; rather, these lawsuits were filed by the major television networks, those same corporations who now want an even greater control of America’s media.

If you think media consolidation has stifled the broadcast industry, please listen carefully to the following statistics on cable. At my office in Los Angeles, there are 48 cable networks bundled together on the expanded basic cable tier. Of those 48 cable networks, Viacom owns all or part of eight of them, NBC owns all or part of eight of them, Disney owns all or part of eight of them, News Corp. owns all or part of six, Liberty Media owns all or part of six, and the local cable operator, Time Warner, owns all or part of seven of them. By using the retransmission consent rules, these conglomerates are able to use their TV station broadcast licenses in an extortion-like way to force unwanted cable networks onto our cable systems and onto our cable bills.

There has been much attention paid recently to the acquisition of the *Wall Street Journal* by News Corporation. Imagine the outrage if Mr. Murdoch demanded that subscribers to the *Journal* now take and pay for the *New York Post*. But that is precisely what he is doing with his new FOX business network. News Corporation is able to force its new business network onto cable systems across the country, regardless of whether a single consumer wanted another business cable network. Such bundled programming arrangements may be great for Wall Street, but not for Main Street, and it does not serve the public interest.

There has been a great deal of discussion about the lack of diversity in the American media landscape as it relates to the ownership of media properties. And rightfully so. Most Americans can name one network that caters to African Americans: BET. But can you name a second or a third? You can’t, because they simply don’t exist as an option on most basic cable systems. The Black Family Channel, the only black-owned and operated cable television network for African-American families, is now only distributed via the Internet. Because it is independently owned and cannot apply the

same bundling leverage that conglomerates can, Black Family Channel was effectively shut out from carriage. In an environment dominated by media giants, there has developed no market that would allow additional minority programming to be created and distributed.

Mr. Chairman, how can media conglomerates be afforded the additional public trust to hold even more broadcast licenses when they behave in this manner? This committee, the Congress, and the FCC must work in concert to protect the interests of the public, the very owners of the airwaves. In the strongest terms, I urge the Congress to consider these issues carefully as it evaluates any appropriate action on the issues of localism, diversity, and media ownership.

Thank you.

[The prepared statement of Mr. Winter follows:]

PREPARED STATEMENT OF TIMOTHY F. WINTER, PRESIDENT,
PARENTS TELEVISION COUNCIL

Good day, Mr. Chairman, Mr. Vice-Chairman and Senators. Thank you for inviting me to be here with you this morning. It is a personal honor for me to appear once again before this Committee, on whose staff I had the pleasure to serve under your good friend and former colleague, Warren Magnuson.

My name is Tim Winter and I am President of the Parents Television Council. With more than 1.2 million members across the United States, the PTC is a non-partisan, non-profit, grassroots organization dedicated to protecting children and families from graphic sex, violence and profanity in entertainment.

At first blush, there would seem to be little connection between the PTC's mission and the media ownership issues that bring us together today. But there is compelling evidence that the consolidation of media outlets has led to a coarsening of television content, a destruction of the concept of community standards of decency, an unresponsive, irresponsible news media that routinely ignores news stories to protect its parent corporation, and a cable television industry that effectively functions as a cartel.

Mr. Chairman, a few years ago the PTC stood shoulder-to-shoulder with a remarkably diverse group of public policy advocates to decry the loosening of media ownership rules: the National Organization for Women and Concerned Women for America, the Salvation Army and Common Cause, Consumers Union, the National Rifle Association and MoveOn.org. As PTC Founder Brent Bozell noted, "When all of us are united on an issue, then one of two things has happened. Either the earth has spun off its axis and we have all lost our minds, or there is universal support for a concept." I believe the FCC's localism hearings across the country have once again demonstrated universal support for a concept: big media companies have not conducted themselves in a manner which merits them owning even more media outlets. The only voices in favor of allowing big media companies to grow even bigger has come from voices within those very companies.

Let me explain why the ownership issue is so important to the Parents Television Council. With very few exceptions, network-owned television stations do not consider community decency standards, even though the terms of their broadcast licenses demand it. This is not just a problem in a small number of markets, but rather it is a problem across this Nation. Four years ago the PTC conducted a survey of approximately one hundred television stations around the United States which were owned and operated by one of the four major television networks. That survey concluded that only one station—in one instance—had ever preempted a network program based on community standards of decency, and that one instance occurred over a dozen years ago.

During the summer of 2003, the Fox Broadcasting Network aired an episode of a crime show called *Keen Eddie*. Criminals trying to sell horse semen on the black market hired a prostitute to perform a particular act on the horse in order to extract the semen. Although the act itself was not displayed, the dialog was so coarse that I am uncomfortable repeating it here. A member of the Parents Television Council in Kansas City wrote a letter to the Fox owned-and-operated station in his market, WDAF-TV, expressing his concern for such content airing at 8 p.m. I wish to read

aloud the response he received from the station's General Manager in a letter dated July 25, 2003:

"We received your letter dated June 30, 2003 regarding the content of the Keen Eddie show that aired on June 10, 2003 at 8pm. We forwarded your letter to the FOX Network. The Network, not WDAF TV4, decides what shows go on the air for the FOX Owned and Operated Television Stations."

When station general managers in cities and towns across the country take their programming orders directly from the network headquarters in New York or Hollywood, it comes as no surprise that they would toe the company line. How does this serve the public interest?

We have heard privately—and repeatedly—from independent local broadcasters around the country who are threatened by the major TV networks that they will lose their affiliate status if they preempt network programming. Fortunately there are a few notable exceptions of broadcasters pushing back on the networks, including Capitol Broadcasting's Mr. Goodman, and others like Pappas Communications. But when local programming decisions are dictated or prohibited by a corporation often thousands of miles away, the public interest cannot be served.

We have also seen instances of bad faith by TV station duopolies: *i.e.*, where one company owns two (or more) TV stations in the same city. In those instances, network affiliates preempted programs, allegedly for indecency reasons. But those very same programs, deemed too indecent for one station, aired in their entirety on the other station in the same city owned by the same parent company. This programming sleight-of-hand is nothing more than a publicity stunt, intended to garner higher ratings for the non-network-affiliated station. This does not serve the public interest; it exploits the public interest.

Media consolidation has led to self-serving news media that seek to protect the interests of their own corporate parents. The FCC has been empowered by Congress to uphold broadcast decency standards on the public airwaves at the times when children are most likely to be in the audience and the Supreme Court has upheld Congress' right to do so. Unfortunately, the broadcast networks have challenged the FCC's ability to enforce these standards and even convinced two Federal judges in New York City that they have a "right" to air the F-word at any time of day, even when they know millions of children are watching. Although dozens of concerned family groups, including the PTC, were shocked that a Federal court could reach such a preposterous conclusion, there has been only limited public outcry over that decision. The reason for this is simple: in large measure, the American people don't know that it has happened. In the wake of that court decision, not a single national broadcast news organization saw fit to cover it, and even with a host of 24-hour-a-day news channels on cable, there was near zero coverage of a decision that will directly impact every family in the country as well as the policies determining appropriate use of the airwaves that they themselves own.

Why no coverage? We believe that the corporate news divisions did not cover their parent companies' lawsuits because they knew the public would be incensed by the arrogance of a media conglomerate arguing for the "right" to air profanity in front of their children early in the day over the airwaves that they—the public—own. In those instances where it has been mentioned in the print media, the story has been intentionally watered down and presented as a ruling on so-called "fleeting" profanity. This is ironic considering that all profanity, by its very nature, is fleeting.

It should be noted that the Second Circuit F-word lawsuit, and the now-pending Third Circuit lawsuit alleging that the Janet Jackson Super Bowl striptease was not indecent, were not brought by broadcasters like Mr. Goodman. Rather, these lawsuits were filed by the major television networks: those same corporations who want an even greater share of the media industry.

The proposed elimination of the newspaper cross-ownership rule threatens the important check that media outlets have on each other. If a television station and newspaper in a given market share ownership it follows that they will share editorial outlook on policy. Even if they don't, how likely is it that a newspaper would criticize a local broadcaster for anything—much less a violation of community standards of decency—if both entities are owned by the same company?

Recently, I was told by a reporter who covers entertainment news for a prominent newspaper that his stories had been edited or even killed when they were unflattering to television programs produced by, or airing on, its television network.

Some argue that a newspaper and a TV station in the same market may find economic efficiencies in news gathering. I do not believe, however, that in such a case the corporate interest outweighs the public interest. Much as networks have a chokehold over the programming decisions of their affiliates, so too would an ownership group exercise editorial control over its media properties in the same market.

Other public interest groups with greater expertise in this area have testified powerfully on this effect before the FCC over the past year.

I'd like to illustrate another way in which media consolidation has an adverse affect on families.

If you think media consolidation has stifled the broadcast industry, please listen carefully to the following statistics on cable. At my office in Los Angeles, there are 48 cable networks bundled together on the expanded basic cable tier. Of those 48 cable networks, Viacom owns all or part of 8 of them; NBC owns all or part of 8; Disney owns all or part of 8; News Corporation owns all or part of 6; Liberty Media owns all or part of 6; and the local cable operator, Time-Warner, owns all or part of 7 of those networks. By using the retransmission consent rules, these conglomerates are able to use their TV station broadcast licenses in an extortion-like way to force unwanted cable networks onto our cable systems and onto our cable bills.

There has been much attention paid recently to the acquisition of *The Wall Street Journal* by News Corporation. Can you imagine if Mr. Murdoch demanded that subscribers to the *Journal* must now take and pay for the *New York Post*? Of course not. But that is precisely what he is doing with his new Fox Business Network. News Corporation is able to force its new business network onto cable systems across the country, regardless of whether or not a single consumer wanted another cable business news network. And if, by using its broadcast network as leverage, it is able to charge the same 90-cents-per-month fee that the other business news network, CNBC, receives, it will be on a path to fleece several hundred million dollars each and every year from consumers—before a single penny of advertising is sold. This holds true for all networks owned by major media conglomerates, which comprise upwards of 90 percent of all cable television content, because they are only sold to distributors in this bundled way. Consequently, consumers and families have no ability to make a market-based decision about what programming to choose and pay for and are forced to pay for enormous amounts of unwatched, unwanted programming just to access what they may be interested in. These bundled programming arrangements may be great for Wall Street, but it is not good for Main Street, and clearly it does not serve the public interest.

There has been a great deal of discussion about the lack of diversity in the American media landscape as it relates to the ownership of media properties, and rightfully so. Most Americans can name one network that caters to African-American audiences, but can you name a second or a third? You can't, because they simply don't exist. For example, the Black Family Channel, the only black owned and operated cable television network for African American families, is now only distributed via broadband Internet. Despite years of success, it was effectively shut out from carriage on many cable platforms because it is independently owned and thus could not leverage itself in the same way conglomerate-owned programming does. In an environment dominated by media giants, there has developed no free market in programming that would compel additional minority programming to be created and distributed. Again, the solution is simple: allow consumers to make their own decisions about what programming they want to pay for.

Rather than take their public interest obligations seriously, the broadcast networks have exhibited a pattern of behavior that reflects contempt for the owners of the very airwaves from which they profit. In November 2004, Viacom—then the corporate parent of the CBS television network—entered into a Consent Decree with the FCC wherein it admitted airing indecent material, paid a fine and committed itself to a detailed compliance plan to prevent the further airing of indecent material.

There is no evidence that compliance plan was followed, and just within the past 2 weeks, CBS meekly explained to the FCC that it understood the terms of the Consent Decree applied only to live programming. Since it was CBS' own attorneys who negotiated the terms of this contract and there is no such stipulation in it, it is preposterous and outrageous that CBS made this claim. If media conglomerates cannot be trusted with something as simple as making a good faith effort to prevent the airing of indecent material, then how can they be trusted to be good stewards of the public airwaves and given even more access to them?

I sat in this very room a few years ago when FCC Commissioner Copps reminded this Committee that the term "public interest" appears no less than 112 times in the original Communications Act. Can this Committee and the FCC forthrightly assert that the corporate interests have conducted themselves in a manner that truly serves the public interest, so that they should be given the additional public trust to hold even more broadcast licenses than they do today?

My answer to this question is an emphatic NO, they have not. In fact the major media conglomerates which now hold so many broadcast licenses have not only failed to act in the public interest, they have repeatedly acted with complete and

utter disregard for the public interest. Not only have many acted in such a manner as to be denied any additional licenses, others have acted, and continue to act, in such a manner as to warrant the suspension or revocation of their existing licenses.

This Committee, the Congress and the FCC must work in concert to protect the interests of concerned families—the very owners of the airwaves—and not merely grant every wish conjured up by those who would exploit their use of this precious resource.

In the strongest terms, I urge the Congress to consider these issues carefully as it evaluate any appropriate action on the issue of localism, diversity and media ownership.

Thank you.

Senator DORGAN. Mr. Winter, thank you very much.

Next, we will hear from Mr. Jim Goodman, President and CEO of Capitol Broadcasting Company, in Raleigh, North Carolina.

Mr. Goodman, you may proceed.

**STATEMENT OF JAMES F. GOODMAN, PRESIDENT AND CEO,
CAPITOL BROADCASTING COMPANY, INC.**

Mr. GOODMAN. Chairman Inouye, Chairman Stevens, Senator Dorgan, and Senators, thank you very much.

My name is Jim Goodman. I am President of Capitol Broadcasting Company, in Raleigh, North Carolina. We own radio and television stations in North Carolina. It's a family owned company. I'm proud to say I'm the third generation of my family to operate the company. The fourth is on the payroll, sent me a memo this week that he wasn't paid enough. I got real mad, until I remembered I sent the same kind of memo to my grandfather. So, we'll get through it.

Now, I am the self-appointed number-one fan of digital television in the U.S. of A. WRAL TV in Raleigh was the first television station in the United States to go digital high definition. I think it's the greatest thing that's ever happened to broadcasting. I think it means broadcasting is relevant now into the digital future, and it's just wonderful. You're going to think I'm nuts when I tell you I almost started crying, Sunday, in the New England/Indianapolis game, because of that beautiful high definition. Did you see it in high definition? Do you realize how much better we are in high—I mean, it's just—digital television works.

Now——

Senator KERRY. I thought you were going to cry because New England was behind for a while.

[Laughter.]

Mr. GOODMAN. OK. It was just—it was just terrific. I've never seen pictures like that.

OK. Now, I want to tie digital television into ownership and localism. The first point I want to make is, we're getting ready to go digital. We're going to turn off our analogs, early 2009, and we're going to be a digital broadcast universe.

Now, we're not sure how that's going to come out. But, remember, I own one TV station, one analog. When I go digital, I'll own four TV stations. I mean, ownership is changing, just because we're going to digital. Now, I can't tell you how that's going to work out. But, you know, we're all going to be high definition, we're going to do multicasting—what's all going to happen to that. But going to digital is going to be a big change, and there are lots of unknowns.

And, by the way, we're digital radio now. You know, my digital FM station—I have a FM analog station, I have a digital FM station. Remember, that's two more stations. So, I don't own one FM station, I own three. Right? And there are going to be lots of changes. How is all this going to come out?

So, my point is, we're at the end of an era. Right? Things are going to really change. So, why in the world would you change ownership now? I mean, we've finished with that other time, and we're going into a new era, and we really all need to see what's going on before we look at ownership. Doesn't make sense to me to work on ownership now.

Now, OK, if you don't buy that, let's talk about how we got into so much trouble in the last ownership proceeding. The way we got into so much trouble is, we had a group off working on radio, and, you know, how many radio stations can you own? And they thought about it, and worked and worked on it. Then we had a group saying, how many TV stations can you own? And they worked on that. And then we had a different group saying, "Well, you know, you ought to let TV stations own newspapers," and they worked on that, and they fought and they fought. They put all that together, right? The first time anybody had ever seen it was when it was all together on a piece of paper. And what they said was, "You can own two TV stations. In some markets, you could own three. You could own eight radio stations. Same market now. Two or three TV stations, eight radio stations, and the local newspaper." I mean, that is such local dominance nobody could—that's why everybody fell to pieces.

Senator DORGAN. Mr. Goodman—

Mr. GOODMON.—when you put it together.

Senator DORGAN.—and the cable company, in the same community.

Mr. GOODMON. Right. I was going to—you know, the cable company was not an FCC ruling, it was a court ruling. You know, we've got to get Justice to work on that.

So, what could happen in my market is, I could own the cable company—or, let's say the cable company could own two television stations, five or six radio stations, and the local newspaper. Now, that's beyond—when you put all that together, it doesn't make any sense.

So, the notion that the Chairman wants to just talk about newspapers, that also doesn't make any sense to me. If we're going to work on ownership, we've got to put it, you know, together. We've got to put all that stuff together and say, how does all this work? And I'm not talking—you know, cable channels, Internet sites, magazines—you know, it goes on and on and on.

That's my first two reasons. We're doing a digital transition, and, second, we're not doing it all at the same time.

If I haven't convinced you with the first two, the third is, if you just want to talk about newspapers—and it kind of bothers me to say this, being a broadcaster—the newspaper, the local newspaper sets the local agenda. In the broadcasting business, we're the breaking-news people. We're going to give you the spot news before anybody else. That local newspaper sets the local agenda. They are the power, they're the political power in the market. And I don't

know why we also want to let them have television. I—that’s just kind of a—I don’t get that, because they’re already the most powerful crowd in town, in terms of the political agenda.

So, I’m just saying, even if you don’t like the first two things I’m talking about, I don’t see letting a newspaper have two TV stations and five radio stations and the cable company. That just doesn’t make sense.

Now—so, what we need to do—here’s the plan. We’re getting ready to go to digital. Now, before we go to digital, we need to do the minimum public-interest standards proceeding that’s before the Commission. Y’all—everybody sort of fusses at us about not doing a good job. You’ve got to remember, there aren’t any standards. There aren’t any public-interest standards for digital broadcasting. I’ve been a digital broadcaster for 10 years, and there aren’t any public-interest standards. And we’ve been asking the Commission, “OK, guys, let’s do public-interest standards. Tell us what you want us to do.” And we’ve also said, “By the way, you know, we’ve got people who say broadcasters do a good job, broadcasters do a bad job.” I’m on the “Do a better job”—I’m on the “Do a good job,” but, in any event, nobody knows, because there is no reporting. So, we’ve got a proceeding at the Commission, on disclosure. So, we do minimum public-interest standards, we come up with the disclosures so we can really see how we’re doing, some information that makes sense, we do the digital transition, and then we look at ownership. Right? To me, considering ownership now is just—it’s just out of order. I mean, it’s just out of logical order to get us to the digital transition. Right? So, that’s my story, and I’m sticking to it.

I’ll be happy to answer any questions. Thank you.

[The prepared statement of Mr. Goodmon follows:]

PREPARED STATEMENT OF JAMES F. GOODMON, PRESIDENT AND CEO,
CAPITOL BROADCASTING COMPANY, INC.

My name is Jim Goodmon. I am President & CEO of Capitol Broadcasting Company, Inc., and I am proud to say that I am the third generation in my family to serve as President. Capitol operates radio and television stations in North Carolina.

Personally, I have never been more excited about broadcasting. As many of you may remember, I am the self-appointed nation’s most enthusiastic digital television cheerleader. WRAL-DT signed on July 23, 1996 becoming the Nation’s first commercial high-definition (“HD”) television station. In 2001, WRAL-DT began multicasting allowing our viewers to watch CBS network and local programming in HD on one channel and 24-hour local news, sports and weather in standard definition on another channel. When needed, WRAL-DT can become four or more stations giving our viewers additional local and/or diverse programming.

Three and a half years ago I testified before this Committee on the same issues being addressed at today’s hearing. Much of my testimony remains the same, but there are two striking differences. First, by 11:59:59 p.m. on February 17, 2009, television broadcasters must turn-off their analog channels signaling the end of one era and the beginning of another. Second, digital radio is now a reality with over 1500 radio stations broadcasting in HD. As broadcasters move from analog to digital, now is *not* the time to revise the media ownership rules.¹

That is my first point today—I repeat, with the transition to digital, now is *not* the time to revise the media ownership rules. As previously noted, WRAL-DT is actually two channels and can be three, four or more, and many HD radio stations

¹The one exception to this is the so-called UHF discount rule. Pursuant to the UHF discount rule, UHF television stations continue to be attributed with only 50 percent of the television households in their Designated Market Areas (“DMAs”) for purposes of calculating the 39 percent national television ownership cap. Many VHF analog stations are (or will become) UHF digital stations, so it is very important that the UHF discount issue be resolved prior to February 17, 2009 for calculation purposes.

are already offering two or more channels, including WRAL-FM. In effect, Capitol's two digital television stations in Raleigh-Durham can be eight television channels, and its two radio stations can be six or more radio channels. I urge Congress and the FCC to wait and carefully evaluate the impact of the digital transition on localism, diversity and competition before changing the current media ownership rules.

My second point is that the media ownership rules remanded by the Third Circuit must be resolved by the Commission in a comprehensive fashion, taking into consideration the interrelationship between the various rules on a national, state and local level. In 2003, although the Commission reviewed its new media ownership rules individually, with guidance from the now infamous Diversity Index, there is no indication that the Commission analyzed the collective impact of the new rules on the public interest and the Commission's core values of localism, diversity, and competition. Applying the Commission's new 2003 rules, in Raleigh-Durham, Capitol could own two television stations; five or more radio stations; and the Raleigh and Durham daily newspapers, *The News & Observer* and the *Durham Morning Herald* respectively. In North Carolina, Capitol could own 11 television stations; more than 30 radio stations; and the daily newspapers in Raleigh, Durham, Charlotte, Asheville, Greensboro, High Point and Winston-Salem. Without antitrust intervention, Capitol could also own Time-Warner Cable and an unlimited number of cable channels, Internet websites and magazines.

By ignoring the interplay of its new rules, the Commission violated its own stated policy of concentrating too much *potential* power in the hands of a single media outlet and created the absurd results noted above. The Commission's 2003 Media Ownership Order² notes the following at ¶¶ 28, 29 and 38:

Further, owners of media outlets clearly have the ability to affect public discourse, including political and governmental affairs, through their coverage of news and public affairs. Even if our inquiry were to find that media outlets exhibited no apparent "slant" or viewpoint in their news coverage, media outlets possess significant *potential* power in our system of government. We believe that sound public policy requires us to assume that power is being, or could be, exercised.

The record contains evidence that reporters and other employees of broadcasting companies alter their news coverage to suit their companies' interests. This suggests that whatever financial interest that media companies may have in presenting unbiased news coverage, those incentives are not the only factors that explain news coverage decisions.

As we have explained, "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."

In 2007, let's not repeat the mistakes of 2003. Because of the overlap among various media ownership rules, a holistic, harmonized approach is required to comply with the Third Circuit's remand.

My third point is minimum public interest standards and reporting requirements are needed for digital broadcasters. The Commission's digital public interest notice of inquiry was adopted in 1998, a standardized disclosure rulemaking was adopted in 2000, and the localism notice of inquiry was announced in 2003 and adopted in 2004. I urge the Commission to complete these three rulemakings before moving forward with any changes to the media ownership rules. As I noted earlier, WRAL-DT has been on the air for more than a decade without digital public interest rules.

Every broadcaster I know, myself included, believes they are following the Commission's rules and doing a good job of serving their local communities, but there is always room for improvement. The problem is as I see it that we are an industry with few standards . . . either mandatory or voluntary . . . and with only a few exceptions, we don't really know what is expected of us. The Commission's present reporting system does not provide much information, so we really don't know how well we are doing.

Minimum public interest standards will make clear to all stakeholders of the public airwaves what is expected. Will broadcasters do more than the minimum? Yes, I think we will. Over the course of the last few years, the public—our viewers—have

²See 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620 (2003) ("2003 Media Ownership Order"), *aff'd in part and remanded in part*, *Prometheus Radio Project, et al., v. F.C.C.*, 373 F.3d 372 (2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).

become increasingly aware that the airwaves belong to them and that we, as broadcasters, are accountable. Standardized reporting and defined minimum standards will at least give them and us a way to begin measuring how well we are doing.

In addition, stations should be required to develop methods for determining or ascertaining the primary issues, needs and interests in the community. Public input should be invited on a regular basis to serve as a guideline for stations to address those community interests through news, public service announcements, and public affairs programming. And then, on a quarterly basis, station licensees should report to the FCC and the public on how ascertained needs are being served through local programming.

To summarize, I respectfully submit that the Commission should complete its public interest and localism proceedings before the Commission addresses media ownership changes; the Commission should understand the impact of the digital transition on localism, diversity and competition before changing its media ownership rules; and the Commission should do a comprehensive review of the media ownership rules to understand the interplay of the rules to avoid the results created in the 2003 proceeding.

Thank you for inviting me to testify today. I look forward to your questions.

Senator DORGAN. Mr. Goodmon, thank you very much for your testimony.

And, finally, we will hear from Mr. John Lavine, the dean of the Medill School at Northwestern University.

Mr. LAVINE. Thank you, Mr. Chairman. Good morning.

Senator DORGAN. Mr. Lavine, you may proceed. Thank you very much.

STATEMENT OF JOHN LAVINE, DEAN, MEDILL SCHOOL OF JOURNALISM, NORTHWESTERN UNIVERSITY

Mr. LAVINE. Good morning, members of the Committee. I am the dean of the Medill School at Northwestern, but this morning I speak only for myself.

I'm pleased to be here. I want to talk about one facet of all of this, which is the newspaper/broadcast cross-ownership ban.

I know it's popular to say that the—and it's almost the accepted wisdom—that the ban is in the public interest. But the facts, which were referred to earlier this morning, simply paint an opposite picture. So, let's look at some of the facts.

The court decision that brought all this back—singled out the ban and said that it was not necessary to localism and diversity, and singled out that it ought to be reviewed separately.

By the way, as an aside, I think that in 50 years, no broadcaster has ever bought a newspaper. But that's a fact that just fits in the picture.

Let me tell you, however, that my feelings about this are not simply academic. In 1974, I bought a daily newspaper, in northern Wisconsin, the newspaper owned a radio station. At that time, I said, "No, I don't want to buy the radio station." And that was a year before the ban. I could have, but it didn't seem to me right for one person to own the radio station and the newspaper in a small town, so I didn't. But that was then, and this is now. And what was right then is not, in my opinion, right today.

Let me explain. In the testimony that I've submitted, in the appendices, you will see that the facts, again, simply blow up the myth that media competition in Shawano, Wisconsin, or Chicago, where I now live, has not exploded in the years since 1974. So, what would have been one owner owning all the outlets in 1974 is just the opposite today.

But what is not growing, and what is not changing, is watchdog, penetrating, trustable journalism that enhances public knowledge and the lives of citizens. I would argue that, thinking about this subject, that ought to be the place we start these considerations. We ought to start with how can we have an informed citizenry? And what are the facts? The facts are that people today have almost no local news from local radio in middle and small markets, and only a handful of news stations in major markets do really informed, original news, not syndicated, on the radio side. Television, in net terms, does about 22 minutes of news in a half hour of show, which simply means that the preponderance of covering the news falls, indeed, to local newspapers.

So, what are the economics of newspapers? Eighty to Eighty-five percent of every revenue dollar for a newspaper comes from advertising. For most paper, if they are lucky, circulation pays for the paper on rolls and the ink in barrels, that's it. Advertising pays for everything else. And, in advertising, classified is the big profit engine to buoy up the newspaper. And classified advertising has taken, of course, enormous hits with the Internet. Craigslist has taken nearly \$100 million out of San Francisco in the past year alone. It is not small wonder that that newspaper is losing the kind of money it is. Think of the list—gone are Knight-Ridder and Pulitzer. Split into two, Scripps and Belo. Dropping—amazingly, dropping out of TV and selling several hundred radio stations, Clear Channel. Emison, the *New York Times*, out of television. Troubled, the Tribune.

And most of America's daily newspapers are not large. Seventy-five percent of them are under 50,000 circulation, 50 percent of them are under 25,000 circulation. Their markets are really struggling. These are not myths. These are facts.

So, if this continues, and we're going to have an informed public, what role do the newspapers play? Let me take a moment on that with some examples.

Yesterday in my town, Senator Klobuchar's story about unsafe toys from this committee was front-page news in the Tribune. Today's story is the same, and you saw the story on the front of the USA Today about people falling asleep running America's air traffic system. Then there are terrific stories about Major League Baseball and steroid use; indeed, in San Francisco, where all of those problems are. Let's not go overboard. Big media is not always bad. You have a responsibility, we all do, to ensure that when Katrina comes or there are stories like ones I just listed or when there are these big national stories happen or a war takes place, there are big media to cover them. But if we care about the small, rising citizen media—and I sure do—they too most desperately need the big media to cover the 24/7 and then let the citizen media go deeper in their communities or analyze what comes out. There is no way that bloggers or anyone else can cover my town like the major media can, but, boy, they can add a whole lot once the major media has laid out what's going on.

And do not think, by the way, that Yahoo! or Google are going to be able to replace all of that. They don't originate anything. They rely on the media, large and small, for whatever they present.

So, that leads me to two final points. One, what happens if we do away with the cross-ownership ban? Members of the Committee, I must tell you, you have an answer to that. You have an amazing answer to that. For 32 years, we have had grandfathered newspaper and radio or television stations cross-owned in this country in significant number, and there are a whole set of studies, including the FCC's own studies, that say that cross-owned papers and stations did, always, a better job of covering politics and news and public affairs, because they are owned by news companies. So we don't have to guess what's going to happen. We have the perfect experiment. We had markets where cross-ownership was blocked, and we had ones where cross-ownership was not blocked, and the ones that were cross-owned did a better job. If that isn't in the public interest, I just—I don't know what is. I do know, at the same time, however, that only in big cities are those news stations in existence. And I worry desperately that, in Shawano, Wisconsin, where I didn't buy the station, today radio has one newsperson—one—and there are four stations today. They have one newsperson, who basically covers sports. The only way there is a chance for the people in that town to know what's going on is the newspaper and its news staff and the one news broadcaster to team up to give that area news that really matters.

And, finally, my other point is, let's talk about minority ownership. I think it is just scary, disgraceful, that we would all say, "This is very important"—I say it, I know you say it, we all believe it—and yet, the cross-ownership ban stops minority daily newspapers from owning a radio station in their own community. It makes no earthly sense to me that the energy behind a Black or Latino or Native American or Asian newspaper, the fulcrum of the community, cannot own a radio station to better serve that community's interests. It just makes no sense. We can't have that happen, because those entities are also part of the same economics affecting the entire industry and because of this ban.

So, in closing, I urge you to recognize the myths and embrace the facts and allow the FCC to look at what they've been looking at for 10 years, and finish it, the cross-ownership ban must go. It's been on the books for three decades. For all the reasons I've cited, it doesn't work. And we must, in the public interest, to have informed citizens, drop that ban so that we can get news in most of the towns in America where it now doesn't exist.

Thank you.

[The prepared statement of Mr. Lavine follows:]

PREPARED STATEMENT OF JOHN LAVINE, DEAN, MEDILL SCHOOL OF JOURNALISM,
NORTHWESTERN UNIVERSITY

Good morning, Mr. Chairman, I am John Lavine, the Dean of the Medill School of Journalism at Northwestern University, but this morning I speak only for myself, and I am pleased to be here.

First when I was a journalist and now as a professor of journalism and media strategy, I have two overriding passions:

- To foster penetrating, watch-dog, trustable journalism that enhances public knowledge and the lives of citizens.
- To educate the next generation of journalists and media leaders so they can share these goals.

The foundation for my comments today are those goals—which I hope you share—and I will focus solely on the decades-old, newspaper/broadcast cross-ownership ban. It may be popular to say that the ban is in the public interest . . . but the facts support the opposite conclusion.

My comments are not just academic; they are also based on real-world experience. At the end of 1974, I completed negotiations to purchase the *Shawano Leader*, a small daily newspaper in Wisconsin.

As part of that purchase, I said “No” to buying the only local radio station because I believed that it was not good for the community to have one owner for its two news outlets.

That was the right decision then. . . . It is the wrong decision today.

Why? . . . Because there has been an intervening explosion in “traditional media” voices and digital media have changed our world.

Here are five standards that you should consider if you truly want free, quality broadcast news in the public interest:

1. Increase media competition.
2. Remove this ban to allow the public to receive more local news—when and how they want it.
3. Remove the cross-ownership ban to enhance minority and news organizations’ voices.
4. Even though it seems contradictory—protecting the public interest requires that you ensure that large, quality news organizations endure.
5. Increase the growth of the new, enormously diverse citizen media. Let’s briefly look at those standards.

(1) The facts quickly dispose of the myth that media competition has diminished. Shawano, Wisconsin and Chicago in 1975 versus 2006–07 illustrate this point.

If you review the Appendices that I have submitted, you will see that competition has increased significantly and meaningfully in both markets—just as it has everywhere in the country—whether they be small markets or large markets.

Competition is growing, and there is no end in sight. What’s not growing is news. Let’s turn to Standards 2 and 3 to address that concern.

(2) What would happen to local news if the cross-ownership ban was not in place?

Interestingly and uniquely, there is a 32-year record of what happens when the ban is *not* present. Just look at the performance of stations in the so-called “grandfathered” markets from the size of Miles City, MT to Chicago.

My Appendices cite multiple studies, including some by the FCC itself, that demonstrate that the only distinguishing feature of broadcast stations owned by newspapers as compared to other stations is that *the cross-owned stations do more and better local news and public affairs programming*.¹

Isn’t that the essence of the public interest?

And that’s it, there are no other differentiators. The studies confirm that the ban is an obstacle to the public having more local news.

As part of this, have you ever asked yourself why only the largest cities in this country have true all-news radio stations? Not syndicated talk shows, I mean all-news, with local news and local reporters.

The answer is that all-news stations are very expensive to operate and can only be supported in a few large markets *unless* the cross-ownership ban is removed.

If the ban is gone, small and middle American cities can tap the local news which is the core product of local newspapers, and more all-news and local news on radio will be the inevitable result.

And, don’t count on Google or Yahoo! to cover the local school board or city council. They have no journalists. They derive their news from newspapers and other sources.

Next, let’s look at standard number 3.

(3) Remove this ban if you want to enhance minority and news organizations’ ownership and voices.

¹ In the FCC study done by Jeffrey Milyo, he found that cross-owned television newscasts contained more minutes of news, more local news, 30 percent more news coverage of state and local political candidates, more time for candidates to speak for themselves and no difference a partisan slant than any other stations.

Jeffrey Milyo, Hanna Family Scholar, Center for Applied Economics University of Kansas School of Business and Associate Professor, Department of Economics and Truman School of Public Affairs, University of Missouri. FCC PUR 07000029: The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News, June 13, 2007.

Because of the ban, any non-news outlet can own a broadcast station, but minority-owned newspapers cannot.

The minority press is struggling, and in the public interest I urge you to enable them to compete, to provide news to their communities when, where and how those citizens want it. This ban thwarts those essential minority voices, and that is just plain wrong.

In the digital world, citizens—and especially the young—will use every medium—newspapers, broadcast stations, cell phones . . . all of it.

If you allow minority owned newspapers to own a station, that is the only way they can compete, for competition in media from here on is creating a portfolio of media outlets where the community's advertisers can reach their customers, but, most important, where the minority media can put on the air, for example, music, that the leaders and parents in the Black community demanded at the FCC hearing I was at in Chicago a few weeks ago.

It is music young people like, but it is not the poisonous kind that those parents said was violent and hurting their community.

Then, the newspapers can tell the community that “their station” is available, and the parents and young people will have a local news and culture outlet that they need.

Isn't that in the public interest?

(4) Even though it seems contradictory—protecting the public interest requires that you ensure that large, quality news organizations endure.

We need the large players because this is a huge (300 million population) society. When the next 9/11 or Katrina or Amber Alert happens, we need major media outlets. No blogger can adequately cover these happenings.

Here are a few of the recent stories that would not have been reported to you or to the public without the resources and commitment of a major news organization:

- Last week's disclosure about the chair of the Consumer Product Safety Commission and her predecessor taking industry paid-for trips.
- The unsafe and deteriorating conditions at Walter Reed Army Medical Center.
- The revelation of secret CIA prisons in Eastern Europe.
- Disclosures of the National Security Agency's secret telephone call database and wiretapping program.
- Rampant steroid abuse in major league baseball.
- Safety violations in nuclear weapons manufacturing processes and nuclear power plants.

Big is also not always bad, and when it comes to news and matters of large scale or complexity, big is essential for an informed and assured citizenry.

(5) Increase the growth of the new, enormously diverse citizen media.

Larger, traditional news organizations also provide the fuel that many citizen media need to thrive.

The Chicago Tribune, WGN radio and TV are mainstays in the radar screen in my hometown that citizen media must have to learn, 24/7, what's happening locally and around the world.²

With that information, citizens can find stories, test and analyze them, and use those reports as a jumping off place to develop their own news and information.

In summary, I urge you to recognize the myths, embrace the facts and allow the FCC to complete its 10-year examination of the cross-ownership ban.

It has been on the books for over three decades without change. Now, even as the world has changed radically and permanently—we must move beyond 1975.

Removing the ban will go a long, long way toward fostering quality journalism, minority voices, and localism and news in the public interest.

It will also help ensure the viability and public service of local broadcast stations. Thank you.

²I have my criticisms of the Tribune's news coverage in Chicago, but there is no question that its hundreds of reporters at the Chicago Tribune and the news staffs of WGN-TV which has an hour not a half hour evening news show, and the news coverage of CLTV, Hoy, RedEye and WGN radio—which is all news and local, not syndicated news and talk—contributes far more news and information to this market than anyone else.

If we are committed to providing tough, demanding, quality journalism to an “informed public” and to enhancing the public interest, localism and minority voices, there is no defensible rationale to prohibit one newspaper from serving citizens with a combined news staff on paper and over the air.

APPENDIX I

Competition since the 1975 Cross Ownership Ban

- In 1975, the presence of UHF/TV and FM radio was small compared to today.
- There was no satellite or cable television, Internet, cell phones or digital broadcast.
- The number of terrestrial broadcast networks went from three in 1975 (ABC, NBC, CBS) to today's ABC, NBC, CBS, FOX, PBS and CW. And in February 2009, they will morph into myriad more with the switch to digital.

APPENDIX II

Competition in Shawano, WI and Chicago 1975 vs. 2006/07

Today in Shawano: More Competition: Less News.

- The census shows that the county grew from 32,650 in 1970 to 40,664 in 2000, the last census.
- There is a cable system with numerous channels.
- There are now four radio stations in that small town, but their collective news staff has diminished to one person.
- The *Shawano Leader* is still there, but its circulation is down and its news staff of 6.5 full time and three part time has diminished.
- There is also an online, "local" newspaper that appears in a Google search; it scrapes other media outlets.

Today in Chicago: Unbounded, Increasing Competition: Inadequate Diverse or Citizen News.

- In 1975, there was a tiny amount of TV derived in Chicago by ADS (alternative delivery systems; not cable.) By 2006, cable had penetrated 63 percent of the Chicago households and ADS (primarily satellite) has another 20 percent. So, 83 percent of the households had multiple TV channels coming in from cable or ADS. (Source: Nielsen).
- National (U.S.) online household penetration for dial-up and high speed broadband in 1975, 2000 and 2007: There were no online connections in 1975. In 2000, 51 percent of the households had dial-up connections and 5 percent had high speed broadband. By 2007, 27 percent had dialup connections while 58 percent had high speed broadband. (Source: Jupiter Research)
- In Chicago Newspaper Designated Market (NDM) circulation divided by NDM households (using a 7-day average) was 28 percent in 1975 versus 17 percent in 2006. (Source is Audit Bureau of Circulation (ABC) and Publishers' Statements).
- The 7 day average circulation for Chicago Tribune in 2000 was 668,000. In 2006, it was 617,000. (Source: Scarborough)
- Revenues for the *Chicago Tribune* in 2000 were \$882,013,000. In 2006 they were \$862,660,000, a decline of -2.2 percent for the same period WGN revenues fell from \$145,839,000 to \$135,480,000, a decline of -7.1 percent. (Note: The decline in constant dollars would be more substantial.) (Source: Tribune internal data)
- The late night TV news ratings in Chicago in 1975 were 45. By 2006 Nielsen reports it was 24. During that same period, *Tribune's* WGN went from a 7 rating and 12 share in 1975 to a 5 rating and a 7 share in 2006. Note: Chicago is the 3rd largest Designated Market Area as defined by Nielsen. (Source is Nielsen data provides by Telerep).
- In both Shawano and Chicago, cable plays a major role with Charter Communications Cable in the former and Comcast and others in the Windy City. The number of news competitors on cable and satellite is on a growth curve with news networks from Aljazeera English and Arabic, CNN, ESPN, Golf, BBC News, Chinese, Japanese, etc., etc. The national average number of cable channels per system is 223.³

³In the Matter of Annual Assessment of the Status of Competition in the Markets for Delivery of Video Programming, Eleventh Report, MB DKT No. 04-227, FCC 05-13.

APPENDIX III

Empirical Studies Showing Cross-Owned Broadcast Stations Produce More and Better Local News

- Jeffrey Milyo, University of Kansas School of Business; Department of Economics and Truman School of Public Affairs, University of Missouri, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, August 2007.
- Daniel Shiman, FCC, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, August 2007.
- Craig Stroup, FCC, *Factors that Affect a Radio Station's Propensity to Adopt a News Format*, August 2007.
- Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality*, 2003.
- Thomas C. Spavins, et al., FCC, *The Measurement of Local Television News and Public Affairs Programs*, 2002.

APPENDIX IV

CROSS-OWNED AND MAJOR TELEVISION STATIONS BY MARKET

DMA Rank and Name	Cross-Owned	Non Cross-Owned
1 New York, NY	WWOR, WYNY (<i>NY Post</i>) and WPIX (<i>Newsday</i>)	WABC, WCBS, WNBC
2 Los Angeles, CA	KTLA (<i>Los Angeles Times</i>)	KABC, KCBS, KNBC, KTTV
3 Chicago, IL	WGN (<i>Chicago Tribune</i>)	WBBM, WFLD, WLS
6 Dallas, TX	WFAA (<i>Dallas Morning News</i>)	KDAF, KDFW, KTVT, KXAS
9 Atlanta, GA	WSB (<i>Atlanta Journal Constitution</i>)	WAGA, WGSL, WXIA
12 Tampa, FL	WFLA (<i>Tampa Tribune</i>)	WFTS, WTSP, WTVT
13 Phoenix, AZ	KPNX (<i>Arizona Republic</i>)	KNXV, KPHO, KSAZ
16 Miami, FL	WSFL (<i>Sun Sentinel</i>)	WFOR, WPLG, WSVN, and WTVJ
28 Hartford, CT	WTIC (<i>Hartford Courant</i>)	WFSB, WTNH, WVIT
32 Columbus, OH	WBNS (<i>Columbus Dispatch</i>)	WCMH, WSYX, WTTE, and WWHO
33 Cincinnati, OH	WCPO (<i>Cincinnati Post</i>)	WKRC, WLWT, WXIX
34 Milwaukee, WI	WTMJ (<i>Milwaukee Journal Sentinel</i>)	WDJT, WISN, WITI
35 Salt Lake City, UT	KSL (<i>Deseret News</i>)	KSTU, KTVX, KUTV
58 Dayton, OH	WHIO (<i>Dayton Daily News</i>)	WDTN, WKEF, WRGT
77 Spokane, WA	KHQ (<i>Spokesman-Review</i>)	KAYU, KREM, KXLY
80 Paducah, KY	WPSD (<i>Paducah Sun</i>)	KFVS, WSIL
88 South Bend, IN	WSBT (<i>South Bend Tribune</i>)	WNDU, WSJV
89 Cedar Rapids, IA	KCRG (<i>Cedar Rapids Gazette</i>)	KFXA, KGAN, KWWL
92 Tri-Cities, TN-VA	WJHL (<i>Bristol Herald Courier</i>)	WCYB, WEMT, WKPT
93 Baton Rouge, LA	WBRZ (<i>Morning Advocate</i>)	WAFB
95 Waco-Temple-Bryan, TX	KCEN (<i>Temple Daily Telegram</i> and <i>Killeen Herald</i>)	KWTX, KXXV
103 Youngstown, OH	WFMJ (<i>Vindicator</i>)	WKBN, WYFX, WYTV
105 Myrtle Beach-Florence, SC	WBTW (<i>Morning News</i>)	WFXB, WPDE
119 Fargo, ND	WDAY (<i>Forum</i>)	KVLY, KVRN, KXJB
128 Columbus, GA	WRBL (<i>Opelika-Auburn News</i>)	WTVM, WXTX
156 Panama City, FL	WMBB (<i>Jackson County Floridian</i>)	WJHG, WTVY
171 Quincy, IL	WGEM (<i>Quincy-Herald Whig</i>)	KHQA

Source: Federal Communications Commission.

Senator SMITH. Mr. Chairman, may I ask for a point of personal privilege?

Senator DORGAN. Yes.

Senator SMITH. Mr. Chairman, I want my friend from Washington, I want all of my colleagues, to know that I support, entirely, the diversity requirements. That's why Senator McCain and I have reintroduced legislation to achieve that.

But I come from a very rural part of Oregon. I tend to see the world through the eyes of my neighbors. And where I'm—come from, radio stations go out of business all the time, because they can't make it. Television stations out of Tri-Cities occasionally change hands. Recently, the Wallowa Chieftan was purchased by

the newspaper in my town because it was in desperate financial shape.

And so, to the professor's point, that is the prism in which I made my comments. From the comments of people of rural Oregon—I'm sure, rural Washington—I know I'm told by the owners of the *Oregonian*, their circulation is shrinking dramatically because of the pressure from the Internet and in the digital age, that there are—there are big producers that are probably making a lot of money. And that's why I support diversity and would like to make sure we craft this in a way that brings more Latinos, more African Americans, more Native Americans into ownership. But in rural places of our country, some of the things that might be considered don't help, they really, really hurt. And that's where I'm at, and that was the basis and the prism from which I made my comments.

Thank you, sir.

Senator DORGAN. Thank you, Senator Smith.

Let me make two points, and then I want to ask a couple of questions, then I will turn to my colleagues.

First, some while ago, in one of our larger communities in North Dakota, a Texas radio station owner hired a Salt Lake City consultant to try to determine what a Fargo, North Dakota, audience wanted. Strange, isn't it? Texas owner hires a Salt Lake City consultant to evaluate the needs and wants of a local audience. Number one.

Number two, yesterday in the newspaper in North Dakota, two Fargo radio stations, both owned by different companies in Texas, decided, under a lease-management arrangement, to consolidate their evening newscasts. So, what for several decades has always been competing newscasts will now, because of two Texas companies separately owning the stations, reaching a lease-management arrangement of some type, will now only be one newscast. Once again, out-of-state ownership, reduction in the news staff and the newscasts.

Let me ask this question. Mr. Winter first, then Mr. Lavine.

Mr. Winter, Mr. Lavine says, and many others do, "There are more choices and more voices. What are you talking about? More choices, more voices, the Internet. For God's sake, there are all kinds of competition."

You testified in a very interesting way, saying that in your city, with 48 cable channels, 43 of them are owned by the six large, dominant media enterprises. Is that more choices and more voices, or is it more voices and one ventriloquist, or several ventriloquists?

Mr. WINTER. I don't—Senator, thank you for the question—I don't see this as more choices. When you have more of different products offered by the same editorial voice, it's the same board room, the same board of directors, it's the same shareholders that are profiting from their bundled package that I described to you.

With regard to the Internet, I think it's interesting to point out that most people get their news on the Internet from the major media conglomerates that have news sites. MSNBC, CNN, FOX News, these are where people get most of their news on the Internet, by and large. And so, again, it is still the same voice, same

editorial control, and same decisions being made in the same board rooms.

Senator DORGAN. I'm going to ask Mr. Blethen a question, and then come to Mr. Lavine.

Mr. Blethen, Mr. Lavine said, as many do, that the major newspapers are losing money or that, quote, "newspapers are losing money," generally—losing subscriptions. You're a newspaper person. What is happening to the newspapers in our country?

Mr. BLETHEN. Well, this is what I call "back to the future," back to 30 years ago, when we were single-digit margin businesses. What I referred to earlier, over the last 30 years we've seen the rise of a financially driven investor in newspapers and broadcast. And what's happened is, they have a short-term investment mentality. And the degree to which you hear the business is failing, what's failing is, their investments have failed. Ultimately, the people who overpaid and overpaid and finally the market that milked these high margins—as I said earlier, you know, when I testified in this committee 4 years ago, the industry was pulling down 50-percent broadcast margins and 30-percent newspaper margins. Even today, newspapers going through some unprecedented downturn and classified advertising, which was temporary to begin with, are pulling down 16 to 18 percent profit margins.

And the point, Senator Smith, on rural communities is a very good one. My family operates papers in Augusta, Maine; Waterville, Maine; Walla Walla, Washington; and Yakima, Washington, about as rural and low demographic, for the most part, as you can possibly get, save for all the wine people that are now moving to Walla Walla. And I can tell you, we make very good profit margins. We're losing revenue, we're transforming into the new age of lower classified and Internet. We make good margins. And in Yakima, which is a low demographic farm community, we have a 40,000-circulation paper doing very nicely, with three independent television affiliates and several radio stations. We're all making money. And it's good competition, it's good for the advertisers, it's good for the communities.

Senator DORGAN. Mr. Blethen, thank you.

Mr. Lavine, as you might know from publicity from this committee, there was a study that was done by the Federal Communications Commission, among several others, that was not disclosed to the American people or to this committee. A study was done in 2004 by a couple of FCC researchers, concluding that local ownership of television stations adds news content to broadcasts, above that which is coming from foreign ownership, out-of-State ownership. So, that was a study that was done that concludes what one would expect to be the case, and yet, it was withheld and only released by the FCC under pressure from this committee.

Are you aware of that study? And do you think that study—that study is obviously at odds with what you are telling the Committee. How do you explain that?

Mr. LAVINE. First of all, Senator, I'm not saying to the Committee—I didn't address myself to the question of ownership, I addressed just the cross-ownership ban. They are—they are really separate issues. Can I try to answer your question in two ways?

Senator DORGAN. Sure.

Mr. LAVINE. I don't think anyone says that the industries involved are losing money. That's not true. Here are the facts, as I know them. What is happening to newspapers is that their advertising, particularly in classified online, is plummeting. If you look at what can be charged by those companies as they move online to maintain the news staffs that they need to do the job I think we all agree they should do, it's a fraction of what they can charge now. And at no foreseeable time in the future is the money that they can charge anywhere near equal to what it takes to support the news and editorial staffs that we all believe need to be there. It's simply that you're—the steep downward trajectory. If you wish, I have spent, because I'm a professor and I do that, part of the last few days looking at two huge notebooks, which I would be happy to leave before the Committee, that lay out a whole bunch of studies that surround this point. It isn't loss, but it is downward trajectory.

I think the other point is—and I just want to be real clear about this——

Senator DORGAN. Well, would you respond to Mr. Blethen's point of downward trajectory from 40- or 50-percent net down to 15-or—I mean, you know, downward trajectory——

Mr. LAVINE. A group of the publicly traded newspaper companies make 16 to 18 percent, rapidly falling downward. There's another study, which—Frank and I are old friends—which we both have worked with, that is done across public and private companies, and the smaller the property, the more rapidly into the single digits that falls, and, in some very large cities—this is also a problem; I mean, I'm not telling you anything out of school—the San Francisco Chronicle is losing a million dollars a week. This is not a viable future for that newspaper if that continues.

Can I add the news point? Because I think it undergirds the economics.

To say that MSNBC is where people get news may or may not be fine, talking about national news, but I don't think that's what we're talking about. I think we're talking about local news. And, Senator, with respect, I come from Duluth, so I live up in the country that you come from and we both love. And I remember, with enormous pain, what happened in Minot. And, I must tell you, when that rail car started to leak and those stations didn't go on the air and deal with it—I mean, beyond being horrified—it seemed to me that is a sort of classic example where, if a—one station in that market was owned by the local newspaper, a news organization, it would have been on the air, and it would have been available to the community. And that's—we may disagree on that, but at least—I've seen more examples of that over the last 30 years in the newspaper/station-owned markets than not, because they are news organizations.

Senator DORGAN. Mr. Lavine, I've exceeded my time. Let me just observe, however, that, if those six stations had not been owned by one company in Texas, instead had been owned by six individual owners in Minot, I guarantee you they'd have tracked an owner down. It needn't have been owned by the newspaper to have had an opportunity to have some local content that night during that tragedy.

I've exceeded my time, and I apologize to my colleagues for doing that. Mr. Goodman, if you could give me just the briefest answer. Is it counterintuitive to suggest or imply that local ownership would have less news? I mean, it seems to me that the studies and other suggestions are, with respect to the——

Mr. GOODMAN. All the——

Senator DORGAN.—radio——

Mr. GOODMAN. All the FCC studies suggest that there is more local news with local ownership. And, in fact, Senator, an FCC study was just released that suggested that in markets in which there is currently newspaper/television cross-ownership in that market, there is less local news——

Senator DORGAN. That's local news——

Mr. GOODMAN.—in the total market.

Senator DORGAN.—in total in the market.

Mr. GOODMAN. Yes.

Senator DORGAN. I have exceeded my time. I apologize to my colleagues.

Senator Inouye?

The CHAIRMAN. Mr. Nogales, we've heard the testimony of the professor, who suggested that the ban of cross-ownership would increase the possibility of minority media ownership. Do you agree with that?

Mr. NOGALES. Absolutely not. First of all, let's take Los Angeles. Minorities cannot buy a property because it is so expensive. The prices have been driven up by consolidation to where a minority doesn't have the money to do that. And if they have a newspaper and they buy if they have the money to buy a radio station, you can be sure that that conglomerate will come in and snap them up if there is any money to be made. So, do I agree? Absolutely not. We have seen too many examples of that not coming across. That's why the numbers of minorities buying properties are so low. And the numbers speak for themselves. We don't have to invent them, we don't have to speculate on them. The numbers are there. They're very, very clear.

The CHAIRMAN. What is your solution to your problem?

Mr. NOGALES. We've got to stop consolidation. We cannot allow the FCC Chairman to gallop on in December and make new ownership rules that are going to prohibit minority ownership.

You know, as I—all of you believe very much in the public interest, our public interest. Over 33 percent of the U.S. population are people of color. We're left out. We don't have a voice, because we can't afford it, because the companies that control media at this point are so large, and to allow them to get larger and larger makes no sense whatsoever. It becomes a club, a very small club that excludes too many people from it.

The CHAIRMAN. I thank you very much.

Senator DORGAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Blethen, we've heard from Mr. Lavine this morning about some studies, which I'm happy to look at, most of them commissioned by the FCC, about the cross-ownership ban. Why do you think it's so important that we maintain the current ban on cross-

ownership? What do you think is likely to happen if the ban was lifted?

Mr. BLETHEN. Well, I think if the ban was lifted, what you're going to have is—we've already seen a terrible reduction in voices across America and in all of our communities, irrespective of size, and we're going to see even fewer voices. And, with it, we're going to see disinvestment, further disinvestment in journalism and further disinvestment in minority employment.

Listening to Mr. Nogales, I mean, one of the things—this is beyond the Committee's purview, but if they took a look at the minority employment in newspapers in the era of consolidation in this decade, they will find that one of the most egregious failures of my industry, and one of the most embarrassing, is our failure in minority employment. So, we can't even get it right on minority employment, let alone make stations affordable and available to them. But I don't think there is any question that cross-ownership would reduce journalism, reduce employment, drive up ad rates, and take voices out of communities, even small ones.

Senator CANTWELL. And so, how do you think we answer these questions about economics, or do you think there are studies and analysis out there on the other side that also show that the economics can work in these communities?

Mr. BLETHEN. Well, absolutely. I mean, I find—I only really got involved with FCC issues this decade. And one of the things that has just shocked me is the lack of credibility in FCC studies, both their methodology, then how they interpret them, and then how, when they find something that says something they don't like, they hide it from the public. You know, I think this committee needs to go beyond the FCC studies and make sure that there is some credible input out there. And they talk to people like me and like Mr. Goodman who actually run stations and run newspapers on a daily basis, and not large, financially driven conglomerates who are really focused on their financial return, in a global sense, not whether or not the operations are still operating.

These are good businesses. We're going through immense transformation, but we are going to—I have no doubt that newspapers and broadcast stations can continue to make an adequate profit to keep their business going and to invest in local journalism. They cannot sustain the appetite of large financially driven companies, though.

Senator CANTWELL. And to the scalability issue—I'm sorry my colleague Senator Smith left, because, you know, I do feel bad that, in the last election cycle in Pendleton, he probably had to watch a lot of my television ads coming out of the Tri-Cities, and—

[Laughter.]

Senator CANTWELL.—I'm sure that got old after a while.

But to this point about scalability and being able to propose the notion that you have to have some cross-ownership to reach that scalability, do you think that there are statistics that probably show that there are ways—or do you think we have to make any change in that?

Mr. BLETHEN. Well, I don't think you need to make any change. I think you keep the rule in place and get more aggressive on new rules, as I suggested in my testimony. At our smallest paper in

Walla Walla, Washington, which is only 14,000 circulation, there is a local free distribution classified that has been there for 30 years, changes hands every 4 or 5 years. There's a local radio station, it changes hands every 4 or 5 years. It's amazing how the marketplace will take care of these things, even in a small market. And that's what's supposed to happen.

Senator CANTWELL. And I wanted to follow up, Mr. Winter, on your point. Do you have a list of other complaints that have been filed related to, you know, any objections on content that have again been referred to the individual corporations, as opposed to individual stations responding?

Mr. WINTER. Senator, the letter that I have here—and I'm happy to leave it here for the record—is, I think, the most egregious example of a general manager taking no responsibility whatsoever for what he or she put on the air in his or her community, and abdicated entirely to the network. It is the most egregious example I've ever seen.

I am only aware of other broadcasters who have told me privately that they are forced to make those decisions, whether they want them or not.

Senator CANTWELL. Thank you.

And maybe that's something we could follow up in collecting more data and information on.

I thank the Chair for this—

Senator DORGAN. Senator Cantwell—

Senator CANTWELL.—hearing.

Senator DORGAN.—thank you very much.

Senator SNOWE?

Senator SNOWE. Yes, thank you.

First of all, Mr. Lavine, have you read the FCC's studies?

Mr. LAVINE. Almost all of them, Senator.

Senator SNOWE. Yes. And what's your analysis of them?

Mr. LAVINE. Well, the study—again, I only looked hard at one point, which was the cross-ownership ban. It seems to me that the overwhelming preponderance of them came all to the same conclusion, which was that more politics, public information, public policy was covered in—on stations, radio and television, owned by newspapers than not. And it makes common sense, since these are news organizations, and so, they do that.

I did not analyze the studies with reference to the other questions that you're considering today, but I did look at—

Senator SNOWE. On the issue of localism, for example?

Mr. LAVINE. Well—yes. I mean, localism is certainly—local news is, indeed, what I'm addressing. But I didn't look at the broader issue of localism, since there are many other mechanisms in the proposal that the Commission has raised, and I—that was not the point of my testimony.

Senator SNOWE. Well, you know—and I'd like to have Mr. Blethen comment, as well—but the—there are dual challenges here. One is, of course, that the FCC, you know, based on speculation in the media that they're going to issue rules regarding easing ownership, and that could come as early as November 13, only have a 30-day comment period, which is an impossibility; it's trying to mute the public's voice on this serious question, a question on

which the Congress has been heard repeatedly and resoundingly repudiated the FCC's direction in the past.

Second, there already have been questions about the integrity of the report by a collective group of consumers that submitted—and I don't know if you've had a chance to look at their submission—but they were pretty critical of the FCC's methodology, that it wasn't peer-reviewed, that it was incoherent, that they were really pursuing a foreordained conclusion. That's deeply troubling. And they say that, in fact, if you use the FCC's own data, that it shows that lessening newspaper/broadcasting cross-ownership rules results in a net loss of the amount of local news; that, in fact, it's a loss of an independent voice, as well as a decline in marketwide news production. Would you agree with that? I mean, they come to some very strong conclusions—

Mr. LAVINE. Yes. Senator—

Senator SNOWE.—first and foremost, and we—you know, and, again, the analysis is disconcerting, and certainly it's something that we should be examining. They have not really separately considered the question of localism in conjunction with this whole cross-ownership. That should be, given where we are today. So, I think it's in all combinations. And the court decision concluded the limits were not supported by the research and the data that had been put forward by the FCC in the past. That was the whole question, and it's a question that we're confronting now.

Mr. LAVINE. Senator, I have three quick answers.

One, the court did separate out the ban on cross-ownership from the rest of what you've described, and said they didn't see that that held up. So, the court, on its own, is saying diversity and localism—the ban on cross-ownership is not—is not thwarting that.

Two, we have 32 years and a whole lot of studies far removed from the FCC that have been done in the academy and elsewhere, looking at all the markets that have been cross-owned and that were grandfathered in before the ban took place. That's why I'm comfortable saying we don't need more time on that. I understand what you're saying about the other larger issues, and I understand the complexity of that.

I guess, if I had to make an argument, I would make it that 32 years, the courts saying it, and seeing that history, I feel very comfortable saying we can set aside the FCC studies and still reach the conclusion we're going to get more local news. That's what we need.

Now, whether that applies to the other issues you're talking about, I'm not prepared to say. I'm happy to look at it, but I didn't come prepared to do that. And I do understand it's a more complicated question.

Don't mix the two. This one has been sitting there for 10 years, we've had plenty of time to look at it. And, for the small towns in just the kind of discussion we had, I think you can—we can deal with it, and then move on to the larger question in a timetable that you find wise.

Senator SNOWE. Well, the court affirmed the FCC's decision with respect to eliminating the newspaper/broadcast cross-ownership rule, but it also concluded the specific limits selected by the FCC were not supported by reasoned analysis. So—

Mr. Blethen?

Mr. BLETHEN. Well, you know, it's like this—to me, it has never really been rocket science. You've got the free press, which is made up of broadcast and newspapers, and, increasingly, the Internet. And it is essential to our democracy, and it is essential to local communities. And we have a lot of large companies now, and individuals, who have been conglomerating and taking control of these markets, both on a local basis and on a national basis. And as we get fewer and fewer owners of both our national media and our local media, it just doesn't make sense that that's good for advertisers, for citizens, or for democracy.

You know, we can kick studies around—Consumers Union, Committee of Concerned Journalists—I mean, there are a number of organizations who have looked at the kind of massive disinvestment that has gone on when you get absentee and conglomerate owners. The first thing that happened was, about a decade ago, as the rise of absentee newspaper owners took over, was a huge disinvestment in statehouse coverage, which was written about by Gene Roberts and Tom Kunkel at the University of Maryland Press. And today what we have for statehouse coverage across America is a shadow of what it used to be.

In Olympia, Washington, we used to have several radio stations, several TV stations, and several newspapers down there covering it, and we have more than most now, and it's still a shadow of what it was.

And then, you look at the national level, and the argument that big is better and I've never really seen big be better, but there has been a massive disinvestment in foreign reporting. You know, we are becoming illiterate on what's going on in our own statehouses, as well as what's going on in other countries. And this is by organizations where the news entities are still profitable, not as profitable as they were 15 years ago, but still profitable, and should continue to be profitable, but don't make sense for financial investors or people who have some other motive, in terms of controlling the information we receive.

Senator SNOWE. Thank you.

Thank you, Mr. Chairman.

Senator DORGAN. I don't know which of you were here first. Senator Thune?

Senator Thune, you may proceed.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. And thank you for holding the hearing. It's a timely one, considering the challenges that are facing us and the action that the FCC is undertaking.

I think that the competitive, open, and diverse media is, just, an important foundation of our democracy, and I think we have a responsibility, on the Committee, to debate legislation that protects that diversity and localism and media, and also to monitor the activities of the FCC, which regulates all those various media outlets. And I think that this debate is—as I said, is a timely one, and one that those of us who represent rural areas of the country, where we don't have, sometimes, as many options for media outlets as

they, perhaps, have in a more populated area, it's a very important debate for us.

I'd like to have—just pose a couple of questions for some of the panelists. And I thank you for being here and for your input. That's very helpful.

Mr. Lavine, in your written testimony, you discuss the potential for one-sided news and philosophical ideas when there is a lack of diversity in media ownership. And I guess the question is, how do you counter the argument when you're—that argument—when you're promoting the concept of a larger, more centralized approach to news outlets?

Mr. LAVINE. Senator, I'm not—I guess I'm puzzled by the “larger, more centralized news elements.” I'm saying something very specific. Most of the backbone of the 24/7 kind of coverage that goes on comes from local newspapers. They look at the world through the prism of being a news organization. It seems to me, when—the facts simply are, we only have radio with full-time real news, not syndicated, but local, in major markets. We have almost no radio coverage in the country—not totally, but darn near totally—in middle or smaller markets. And what I'm saying is, it is certainly far better to have the local newspaper join the one or none—no radio news people to bring news to that market.

Number two, when I was a boy, if you owned a radio station or a television station, it was, if you looked at the economics, almost a license to steal. Didn't matter whether it was the first or the eighth station, or the first or the third television station.

These days, that's not true. The cost of producing news is really, really high. It's not an accident that news doesn't exist in middle and small markets, or even in some large markets. It's too expensive.

So, all I'm arguing for is—we've got 32 years of watching the markets, where a newspaper owns a radio or a television station, and all of the studies, academic and FCC, say those stations, on—as a group, have always done consistently better coverage of real news. We need those voices.

Number two, for diversity, the world coming at us can be summed up pretty quickly. Digital means there is fragmentation of the market, more and more choice, and competition for everybody's time. And all of us, especially the younger we get—my generation reads; but the younger you get, that goes away—all of us use a portfolio of media. It's not one, it's many. And I look forward to the opportunity for a minority newspaper to buy a struggling or on-the-ropes radio station, and bring to it something no big company can bring, which is the ability to say, “This is the voice of the community.” Say it in the newspaper, say it on the station.

I was at the FCC hearing at Operation PUSH, about a month ago, and I listened to a father berate the Commission for stuff that was on the air, and say, “Give us one place we can send our kids.” Boy, oh, boy, I have no doubt, if The Defender in Chicago, a legendary, wonderful black newspaper, owned a small radio station, quite quickly it would become the fulcrum of the community, and that opportunity would exist. And this ban stops that. And, oh, by the way, the station would have news on it, because The Defender doesn't know how to do anything without news, whether it's a

small station in a general purpose, or a small station for a minority community like that. That's all I'm saying. That's a very targeted thing that could be done, and could be done now, and we've had—even the courts said this is not a problem.

The other issues are separate, and that's bigness and complicated. And I probably will end up on your side on many of those. But, on this issue, we need to act.

Senator THUNE. All right. Well, I—if you—if the ban is lifted—and, you know, it seem, to me at least, that creating competition, more voices is the goal and the objective here, and I just don't know how a local, small news outlet competes against a company that's triple or quadruple its size.

Mr. LAVINE. Because it has local news, because those big companies don't cover local markets, and don't know how. Trust me, The Defender or the Shawano Evening Leader are the big player in that community, and they know how to cover everything local and that is there, and they will aggregate an audience around it, and they will be quite successful in doing it. We've stopped them. We've stopped them. We can't do that. Because you look in markets where they are crossed-owned, and there are more news on those stations, and it's local news, it's not something syndicated from far away.

Senator THUNE. Mr. Winter, you had referenced in some of your concerns about, you know, the vulgar content in a television show and comments from the station's general manager. The—I guess the question is, what type of control, if any, do general managers at network affiliates have over programming? And is there a mechanism whereby they could refuse to show a program that's put forward by the network?

Mr. WINTER. Well, the policies that we've heard from the major networks is that the stations always have such a right to preempt if they feel there is a violation of community decency standards. Senator, a few years ago, actually, the same time we received this letter from Kansas City, the station, we conducted a survey, a phone survey. We called 100—actually, it was about 98—television stations owned and operated by networks that were around the country. And we asked the questions to the programming director, when have you preempted a program based on community decency standards? The answer was shocking to us. One instance. On one occasion, one station had ever decided to preempt a program based on community decency standards out of the 100 or so that we polled. The reason is simple: they take their orders from their corporate headquarters, they get the same stock options as the folks back at the headquarters, they are financially motivated to toe the company line. There is, based on our analysis, very little ability for them, or desire for them, to change a network programming decision.

Senator DORGAN. Senator Thune, you have additional time, if you wish.

I have to go to an energy and water panel right now, and Senator Pryor has agreed to chair until it's completed. But I just wanted to thank the witnesses, myself, for being here.

And, Mr. Goodmon, I think you wanted to respond to the last point Mr. Lavine made, about cross-ownership producing more local news, and I wish you would also respond, for the record, on

the issue Mr. Winter has raised, because, in your prior testimony before this committee, you talked about a local affiliate deciding not to air something as a result of local standards. You have first-hand and fascinating experience with that very issue.

So, Senator Thune, why don't you proceed. Let me apologize for having to leave, but Senator Pryor will preside, and I very much appreciate that.

Senator THUNE. Thank you, Mr. Chairman.

And, Mr. Goodmon, you want to—

Mr. GOODMON. Right.

Senator THUNE.—elaborate on this?

Mr. GOODMON. Just for a little reality check here, let me tell you what I think—if the [FCC] Chairman gets his rule passed, here's the deal. I could own 11 TV stations in North Carolina, 30 radio stations, and the local newspaper in Raleigh, Durham, Charlotte, Asheville, Greensboro, Winston-Salem, and High Point. I mean, we're not talking about a little radio station and a little newspaper in this—we're talking about just an unbelievable extension of media consolidation. And, by the way, I could own the cable systems in all those places. So, getting this down to, how are we going to help the little newspaper and the little radio station in a small market is not what's going on here. What's going on here is, we have some really good companies, now, really good, large companies—Tribune, Belo, all these—all great, fine companies. They want to own newspapers. They're not sitting there saying, "We want to do a better job of local news." They want to own those newspapers. They're trying to own more stuff. That's why we're having this hearing. That's why the chairman is doing it. So, let's be honest about what—about what we're really talking about here.

I think there is no way—it's a—there is a loss of a voice. I really get upset when the newspaper people say, "You know, we'll do better news than TV people." Now, I don't know what "better news" is. What we want is a whole lot of people doing the news, you know, and we might like some of it. The notion that a newspaper would say, "Well, we'll do better news than the TV people," I don't—no, I don't—come on. That's just part of it. But we've got to be realistic about what we're doing.

And please consider, this is—I didn't even want to talk about what we should do, I wanted to talk about: this is not the time to do it. We're in a huge change, a gigantic change. It's not the time to do it.

And one other thing. This also sounds a little bit, to me, like the newspapers are saying, "We need a financial rescue." Right? "We've got to own these TV stations, because we've got these financial problems."

Senator THUNE. Well—and if—

Mr. GOODMON. Well, I've got it, too. My point is, my audience is going down. Newspaper readership's going down. It's all going down because of the Internet. And my industry and their industry, we've got to adapt to the Internet. The notion that "to save each other, we have to own each other," doesn't fit.

Senator THUNE. Well, and that's—to Mr. Lavine's point, that was the question or the—I guess, his argument was that this is a matter of survival of—

Mr. GOODMON. No.

Senator THUNE.—those that are out there.

Mr. GOODMON. Now, the other thing I'd point out is, whenever I've looked at a financial statement—and I'm not that kind of guy, now; I want to be a little careful, here—whenever you look at that income statement, there is always a lot of debt in there. And what you've got to understand is, a whole lot of companies paid a whole lot of money—we're McClatchy market, it's a great company—McClatchy bought the local newspaper in our market, then they just bought Knight-Ridder and all these—paid a lot of money for them. Now, they're working real hard to figure out how to pay for that. So, in my mind, when you include your debt service in your operating statement, you're putting an unrealistic position as to whether you are profitable or not. And if people pay too much for what they buy, they pay too much for what they buy. That's not a—see what I mean? I mean, normally that debt service is in there, and I don't include that when I talk about whether it's a profitable operation or not.

Senator THUNE. Thank you, Mr. Chairman.

Thank you, all.

**STATEMENT OF HON. MARK L. PRYOR,
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR [presiding]. Thank you.

It looks like we're going to have a vote on the Senate floor within the next 5 minutes, assuming the Senate stays on schedule, which it always does, right?

[Laughter.]

Senator PRYOR. So, I'm going to ask questions fairly quickly. I have a few. But, at some point I'll need to break off and get down to the floor and vote.

But, let me start, if I may, with a general question for the entire panel. And that is, Commissioner Copps has advocated five steps before loosening the existing media ownership rules. One is to act on the minority ownership proposals. Two is to complete the 2004 proceeding on broadcast localism. Three is to put any proposed new ownership rules out for public comment before a vote. Four is to abide by a process that is transparent, open, and fair. And five is to address media ownership rules comprehensively.

I'd like, if we could, just very quickly, go down the list, here, of the panel, and just give me your thoughts on whether you support what Commissioner Copps is suggesting, or whether you think we ought to take a different route.

So, why don't we start with—

Mr. NOGALES. We wholeheartedly support the Commissioner. It is fair. It is comprehensive. It will allow all of us to understand the facts of the situation, and particularly in relation to minority media ownership. And, again, we're locked out. And to rush to have a vote without a task force first making a study as to what ownership is like out there, and coming out with comprehensive recommendations as to how to better those numbers, is silly.

Mr. BLETHEN. Absolutely. Although I think that's strictly the minimum. I think Congress—as I said in my points at the end of my prepared remarks, there are several things that Congress

should do to go beyond what Commissioner Copps and the FCC are doing, in terms of new public policy, bold public policy, which starts ensuring that we have localism and a variety of voices throughout the country.

Mr. WINTER. I agree with the Commissioner's plan. I think it's precise. I think it will yield the answers that need to be yielded before decisions are made. I support it.

Senator PRYOR. Right.

Mr. GOODMON. Yes.

[Laughter.]

Mr. LAVINE. I think you should separate cross-ownership, after 10 years, eight hearings, 12 sets of responses, and 32 years of watching banned and cross-owned side by side, and get that done. I think transparency and adequate time to do the rest is a good idea.

Senator PRYOR. Well, just for the record, I support what Mr. Copps is proposing, as well.

Let me also ask, if I may—and, I'm sorry, is your name pronounced "Blethen"?

Mr. BLETHEN. Blethen, yes.

Senator PRYOR. When you testified earlier, you talked about one of the things you were surprised about is the FCC's studies basically lack credibility. And I guess you called into question the integrity of that process, when the FCC does studies and the findings and—sounds like, you know, you feel like they may be sort of pre-ordained on what they're trying to conclude, and if they don't work out to exactly what they want to hear, then they are not interested in following those recommendations.

But I would like to get—and Senator Snowe asked kind of a related question, as well—but I would like to get everybody's thought on these FCC studies, and just about that process, and, are they credible? Do these studies have value? Is the FCC following the advice or the recommendations found in the studies, or are they just too biased, or whatever? So, again, if we can just run down the panel very quickly on those.

Mr. NOGALES. I should tell you that the studies are very, very inaccurate, that the ones that have been brought out by Free Press are much, much better, and they're recent, they have the recent numbers on minority ownership, as well as ownership as a whole. So, I wholeheartedly support those, and reject the ones from the Federal Communications Commission, who they themselves have said are not accurate.

Mr. BLETHEN. The same public-service law firm that dealt with Chairman Powell's attempts to overturn the restrictions in—a few years ago, recently, in a FOIA request, uncovered some e-mails between the Chairman and staffers, basically with staffers asking the Chairman who they should use for a study so they can get the outcome that he wants. You know, it's just one more piece in the lack of credibility that the FCC now has in this arena.

I know, in my world, when that credibility is lacking, it takes a long time to rebuild it, and I think this committee probably needs to figure out, How do you go beyond that committee to get some input and some studies? And there are people out there that can do that stuff. Don't take the FCC off the hook, just make sure

they're getting peer-reviewed, they're getting checks, they're getting balances, and they're being held accountable for their studies.

Senator PRYOR. Mr. Winter?

Mr. WINTER. Senator, I honestly, sir, don't know the answer to your question. I'm not qualified to answer it.

Mr. GOODMON. Right. I only know from what I'm—from what I've read, so I'm not in a position to comment.

Senator PRYOR. That's fair enough.

Mr. Lavine?

Mr. LAVINE. I certainly haven't looked at the studies to analyze them in that degree. But let me offer a suggestion, and that is that, on those topics, there is a whole body of work that goes beyond the FCC studies, and, in my world—and, you know, the earlier comments notwithstanding—I don't—I'm a professor, I'm no longer involved—doing television, as I once did, or doing newspapers. I would urge you to take a look at the body of work, because I'm not sure you need more studies, I think you just need to do a metastudy—it's called a metastudy—look at what's out there, and really see where they come out. Much of this has been really ground that's been heavily plowed. You will always come up with some differences of opinion, but I'd do that first, before I'd say, "Now we're going to spend X more time going back over it," if we've got it at hand, if we just do it smartly. Look at the total research that's there.

Senator PRYOR. Mr. Winter, I just have about 5 minutes here before I have to leave and go vote, but let me ask you a question, something you said in your testimony. You had an observation about the negative impact that media consolidation has had on the coarsening of television content. And I'd like to go back to one of the points you made. You said, "If a television station and newspaper in a given market share ownership, it follows that they will share editorial outlook on policy. Even if they don't, how likely is it that a newspaper would criticize a local broadcaster for anything, much less a violation of community standards of decency, if both entities are owned by the same company?"

If you could, I'd like for you to elaborate on that point.

Mr. WINTER. Yes, Senator. I think, just by way of example—it was a recent conversation I had with a newspaper reporter who works for a megaconglomerate that also owns a television network. And he covers the Hollywood beat, as it were, the entertainment industry. And I asked him, point blank, if his editors had ever told him to sanitize a story that would otherwise be harsh to his parent organization. And he said yes. He said that he will not get instructions from the editor to actually change a story that is, to make it untrue, but it will certainly be watered down or killed entirely and not see print if they feel that it is too harsh on its broadcast property.

That was one data point, Senator. And another is going back to this Second Circuit "fleeting profanity" lawsuit. We don't see news outlets talking about that the broadcasters now claim the right to use the "F" word in front of children at any time of the day. And I believe that the reason for doing that is very clear, they don't want to call this out and let the public be aware of it. And I believe that it is that type of mentality, where you have, again, the same

stock options, same financial incentives, you lose the objectivity to criticize, become a media watchdog for those in your own industry. I think an independent media from the print side is vital to actually run an oversight of broadcast television.

Senator PRYOR. Well, this has been a great panel, and I appreciate y'all's time and your preparation and your commitment to be here today. And also, for the audience, because there are a lot of people out there who are very interested in this, I appreciate everyone attending, today.

Let me just say that I want to add my voice to those urging Chairman Martin not to rush a vote on media ownership rules on December 18. I think this is really the sense of the Congress, and certainly the sense of the Senate and this committee, and I would add my voice to those who say that he shouldn't do that.

Let me pause just for a minute here and ask the Committee—we're going to keep the record open, here, for 2 weeks in order for Senators to ask questions or if, during your testimony there are documents that you want to provide to the Committee staff, and have those made a part of the record, but, because of our voting schedule and committee schedule and just end-of-the-year rush here, there were a few Senators that couldn't come that had hoped to, so we'll leave that open for 2 weeks. If the staff contacts you with questions from Senators, we'd love for you to respond to those as quickly as possible.

Senator PRYOR. And so, with that, we'll adjourn the meeting. And, again, thank you all for being here and participating.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB) respectfully submits this statement for the record in the Commerce Committee's November 8, 2007, hearing on Localism, Diversity and Media Ownership. NAB is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts. Radio and television broadcasters provide a free, over-the-air service that reaches virtually every household in America, keeping local communities—and your constituents—informed and connected. Our members serve listeners and viewers throughout the country with entertainment and informational programming, including news and public affairs and vital emergency information.

NAB believes that localism is best sustained by permitting broadcasters to compete effectively in the digital multichannel marketplace. The real threat today to locally-oriented services, including costly services such as local news, is not the joint ownership of broadcast stations, but the stations' inability to maintain their economic vibrancy in the face of multichannel and other competitors that are not constrained by restrictions on local ownership structure. Only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively and provide a significant local presence. Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded ownership restrictions will enhance the ability of local stations to serve their diverse audiences and local communities.

Creating an Uncompetitive and Undercapitalized Broadcast Industry Through Maintenance of Out-of-Date Restrictions on Media Ownership Will Not Serve the Public Interest

Some parties in the media ownership debate continue to argue that the broadcast ownership rules should not be modernized in any respect. Indeed, a few contend that restrictions on local broadcasters should be increased. However, to support such views, one must believe that the media marketplace has not changed over the past several decades or that the media marketplace is less competitive and diverse than before the development of digital technology, numerous multichannel video and audio services, and the Internet. Such a position is clearly untenable.

The Federal Communications Commission (FCC or Commission) originally adopted its local broadcast ownership restrictions decades ago in a very different media environment. In fact, the FCC first implemented local ownership restrictions starting with radio in 1938. The “newest” local ownership rule—the newspaper/broadcast cross-ownership ban—was adopted in 1975 and has never been updated. Moreover, these restrictions on local broadcasters do not apply to any other industry, even those as highly concentrated as cable and satellite. Broadcasters believe that these decades-old rules should be brought up-to-date to reflect the dramatic technological and marketplace developments that have occurred over the past 30 years, and to level the playing field so that local stations can compete against other outlets, including large cable and satellite companies.

Beyond ignoring all the changes that have occurred in the media marketplace in recent decades, those calling for no change to, or for increases in, media ownership restrictions also ignore the state of the broadcast industry in the early 1990s before some of the ownership restrictions were reformed to permit more economically viable ownership structures. In 1992, for example, the Commission found that, due to “market fragmentation,” many in the radio industry were “experiencing serious economic stress.”¹ Specifically, stations were experiencing “sharp decrease[s]” in operating profits and margins. *FCC Radio Order*, 7 FCC Rcd at 2759. By the early 1990s, “more than half of all stations” were losing money (especially smaller stations), and “almost 300 radio stations” had gone silent. *Id.* at 2760. Given that the radio industry’s ability “to function in the public interest, convenience and neces-

sity' is fundamentally premised on its economic viability," the Commission concluded that "radio's ability to serve the public interest" had become "substantially threatened." *Id.* Accordingly, the Commission believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized." *Id.*

Motivated by such concerns, Congress in the 1996 Telecommunications Act acted to "preserve and to promote the competitiveness of over-the-air broadcast stations."² Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes." House Report at 54–55. Congress specifically noted the "explosion of video distribution technologies and subscription-based programming sources," and stated its intent to ensure "the industry's ability to compete effectively" and to "remain a vital element in the video market." *Id.* at 55.

NAB respectfully submits that the Committee should not forget these important lessons of the past. Arguments that the broadcast-only local ownership restrictions should not be reformed are based on a refusal to recognize all the factors that have transformed today's media marketplace, including the development and spread of new technologies; growth in competition for viewers and listeners among greater numbers and different types of outlets and providers; changing consumer tastes, especially among younger viewers and listeners; and dramatic changes in the advertising marketplace, which affect free, over-the-air broadcast stations more than subscription-based media. Policies turning back the regulatory clock would create a fragmented, undercapitalized broadcast industry and place broadcasters at an even greater competitive disadvantage against multichannel and other information/entertainment providers and outlets. As the FCC recognized in its 1992 *Radio Order*, only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer the valuable programming and services that local viewers and listeners want and expect.

Despite the claims by some opposing any modernization of the broadcast ownership restrictions, NAB also observes that the FCC is not rushing to judgment in its current statutorily-required review of the ownership rules.³ The Commission began its reexamination of the newspaper/broadcast cross-ownership ban in 1996 with a notice of inquiry on newspaper/radio cross-ownership, and commenced the still-pending review of the newspaper/broadcast prohibition in 2001. The Commission also commenced a review of radio ownership in 2001. The Commission's review and revision of the television duopoly and radio/television cross-ownership rules in the 1990s resulted in a 2002 court appeal finding the revised duopoly rule to be arbitrary and capricious, and sending the FCC's decision back to the agency for further consideration. See *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002). This remand remains pending, with the arbitrary and capricious duopoly rule still in effect. In addition, the Commission reexamined the local broadcast ownership rules in its statutorily-required 1998, 2000 and 2002 biennial reviews (the last of which remains pending at the FCC after an appeal and decision by the Third Circuit Court of Appeals remanding the agency's decision for further consideration). See *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). Given the number of years that the Commission has been considering reform of the local broadcast ownership restrictions, and the voluminous empirical and anecdotal evidence that has been submitted by those urging reform of these rules, the opponents of reform have no basis for their claims that the Commission is somehow rushing to judgment or that another decade of delay is necessary.

The Existing Local Ownership Restrictions Are Not Needed to Prevent Broadcasters from Exercising Market Power in Today's Multichannel Marketplace

In a multichannel environment dominated by consolidated cable and satellite system operators, local broadcast stations are clearly unable to obtain and exercise any undue market power. For this reason, the traditional competition rationale for maintaining a regulatory regime applicable only to local broadcasters and not their competitors is not a proper basis for keeping the current rules. Indeed, the primary competition-related concern in today's digital, multichannel marketplace is the continued ability of local broadcasters to compete effectively and to offer the free, over-the-air entertainment and informational programming upon which Americans rely. Due to technological advancements, the growth of multichannel video and audio outlets and the Internet, and an expansion in the number of broadcast outlets, an FCC report concluded that, even 5 years, traditional broadcasters were struggling to

maintain their audience and advertising shares “in a sea of competition.”⁴ This competition has only intensified in the past 5 years.

Specifically, NAB has documented in detail the audience fragmentation and increasing competition for listeners, viewers and advertising revenue experienced by broadcast stations, as the result of new entry by cable television, satellite television and radio, numerous Internet video and audio applications, and mobile devices such as iPods and other Mp3 players. For example, in the first 3 months of 2007, Internet advertising set new records by taking in \$4.9 billion, a 26 percent increase over the previous year.⁵ Meanwhile, advertisers are expected to spend 5 percent less on local and national spot advertising in 2007 than they did last year.⁶ U.S. Internet advertising spending is now predicted to overtake radio advertising in 2007.⁷ Cable’s share of local television advertising has also grown substantially, with cable local advertising revenues increasing 12.2 percent from 2003 to 2004 and 12.0 percent from 2004 to 2005.⁸ Local cable system advertising revenue experienced compound annual growth of 10 percent from 1999–2004, with local television station revenue experiencing only 2 percent compound growth in those same years.⁹ In light of this undisputed evidence about enhanced competition in the advertising market, the local ownership rules should be structured so that traditional broadcasters and newer programming distributors—which clearly compete fiercely for advertising revenue—can all compete on an equitable playing field.

A more level regulatory playing field is particularly urgent, given that local broadcasters’ most prominent competitors enjoy dual revenue streams of both subscriber fees and advertising revenues. Broadcasters, of course, are almost solely dependent on advertising, and local stations today must struggle to maintain needed revenues in a vastly more competitive advertising market. Any realistic assessment of today’s media marketplace leads to the conclusion that competition considerations dictate change in the broadcast ownership rules.¹⁰

Consumers’ Interests in Diversity Are Unquestionably Being Fulfilled Nationally and in Local Markets

The existing broadcast-only local ownership restrictions are not necessary to maintain diversity in today’s media marketplace. The proliferation of broadcast outlets and the rise of new multichannel video and audio programming distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners. This proliferation has been documented by numerous surveys of the numbers of media outlets and owners in local markets.¹¹ An FCC study of selected radio markets from 1960 to 2000 showed an increase in the number of outlets of almost 200 percent and an average increase in the number of owners of 140 percent over the 40-year period.¹² Empirical studies have also shown that consumers routinely access many additional “out-of-market” outlets, thereby adding to the diversity of entertainment and information sources widely accessible to viewers and listeners in local communities.¹³ The public’s interest in receiving diverse content is therefore being met both nationally and on a market basis.

Numerous studies, including those by independent parties, have confirmed that the post-1996 changes within local broadcast markets, especially among radio stations, have enhanced the diversity of programming offered by local stations. Indeed, independent studies have concluded that “increased concentration” in radio markets has “caused an increase in available programming variety.”¹⁴ A 2007 study commissioned by the FCC concluded that “consolidation of radio ownership does not diminish the diversity of local format offerings.” Indeed, “[i]f anything, more concentrated markets have less pile-up of stations on individual format categories, and large national radio owners offer more formats and less pile-up.” *Station Ownership and Programming in Radio* at 44.

A 2006 study by BIA Financial Network also showed that radio stations are providing a wide range of programming targeted for diverse audiences, including minority groups and groups with niche tastes and interests. For example, between 2000–2006, the number of Spanish-language radio stations increased by 45.5 percent; as a result, over half (50.4 percent) of the Hispanic population in Arbitron metro areas receive over-the-air 10 or more Spanish-language radio stations, with more than three-quarters (79.5 percent) receiving six or more of these stations. The number of news/talk stations grew by 20.6 percent between 2000–2006 so that more than half (55.5 percent) of the population in Arbitron metros receive at least six news/talk radio stations and 70.8 percent have over-the-air access to at least four such stations.¹⁵ Given the diversity benefits stemming from joint ownership of radio stations, and the lack of any competitive harm from such ownership, there is no basis for cutting back on the permitted levels of common ownership in local radio

markets, but in fact the continued relaxation of these limitations should be considered.

Beyond increasing diversity of content, numerous other studies indicate that the joint ownership of media outlets in local markets does not inhibit the expression of diverse *viewpoints* by the commonly owned outlets. For instance, two studies examining the diversity of information and viewpoints expressed by commonly owned newspaper/broadcast combinations regarding the 2000 Presidential campaign concluded that commonly owned outlets did not speak with a single voice about important political matters.¹⁶ One of the new studies commissioned by the FCC examined the partisan slant of television news coverage, finding that there is no difference between newspaper cross-owned television stations and other major network-affiliated stations in the same market.¹⁷ In fact, the most recent research casts considerable doubt on the long-assumed (but never proven) link between ownership and viewpoint and shows instead a link between *consumer* preferences and the viewpoint or slant of media outlets, whether print or broadcast. For instance, a 2006 academic study of newspaper slant found that “ownership does not account for any of the variation in measured slant,” but concluded that the political orientation of newspapers is driven more by the ideology of the targeted market than by ownership and that “newspapers’ actual slant is close to the profit-maximizing level.”¹⁸ Similarly, an FCC-commissioned 2007 study examining the political slant of television stations found that the partisan slant of local television news was associated with average partisan voting preferences in the local market, rather than ownership patterns. *Milvo Television News Study* at 23–24. In other words, the most recent research has found that any media slant is in direct response to *consumer* preferences—not the ideology of any particular owner.

The ability of consumers to obtain diverse content and viewpoints is only enhanced by the growing level of substitutability between media for both entertainment and informational purposes. Studies conducted for the Commission and other surveys on media usage reveal considerable substitutability between media for various uses. Indeed, the recent studies showed that multichannel outlets and the Internet compete with—and substitute for—the use of traditional media including broadcast and newspapers for both entertainment and information, especially among younger consumers. For example, Arbitron/Edison Media Research recently found that the Internet is now regarded by consumers as the second “most essential” media in American life, and researchers predict that “it is likely that the Internet will soon” move into “first place.”¹⁹ One of the recent FCC-commissioned studies confirms that the Internet is gaining as a competitor to traditional media outlets.²⁰ Respondents to the Nielsen Media Research survey in *FCC Study I* reported greater weekly Internet usage (12.8 hours) than usage of both broadcast television (10.4 hours) and radio (6.2 hours). *FCC Study I* at 4, 30, 72. When compared to similar survey results from 2002, this new Nielsen survey also strongly indicates that the extent to which consumers are substituting the Internet for television and radio is increasing over time. In just the 5 years between the two Nielsen surveys, the percentage that responded that they did not use the Internet fell sharply from 31.3 percent to only 5.4 percent.²¹ These Nielsen surveys also showed that other outlets, particularly cable television, are important sources of news and information, including local, national and international.

Opponents of reform, however, continue to insist that the effect of the Internet in the media marketplace generally, and especially as a source of news, is minor. This position is contrary to reality. Obtaining news and information (along with sending or reading e-mail) are the most popular on-line activities. As of early 2007, 72 percent of all Internet users (and 79 percent of home broadband users) report that they “get news” online, with 37 percent of all Internet users (and 45 percent of home broadband users) reporting that they got news “yesterday” online.²² Online video, including news videos, now reach a mainstream audience, with 57 percent of online adults using the Internet to watch or download video and nearly one-fifth (19 percent) doing so on a “typical day.”²³ More than three in four (76 percent) young adult Internet users (ages 18–29) report online consumption of video, with 31 percent watching or downloading some type of video on a typical day. News content is the most popular type of online video overall and with every age group, except for the youngest. Overall, 37 percent of adult Internet users report watching news videos. *Pew Online Video Report* at i–ii.

Thirty-one percent of all Americans (and 46 percent of all Internet users) used the Internet during the 2006 campaign to obtain political news and information and discuss the races through e-mail.²⁴ Fifteen percent of all American adults reported that the Internet was their “primary source for campaign news” during the 2006 mid-term elections, up from only 7 percent in the 2002 mid-term elections. Broadband users under age 36 said that the Internet was a “more important political news

source than newspapers.” *Pew 2006 Election Report* at i-ii. Moreover, the Internet is already proving more integral than ever to political candidates in the upcoming 2008 elections. Candidates are spending large sums on Internet advertising and relying heavily on the Internet to communicate with supporters, while potential voters looking more to the Internet to find political information, either directly from candidates or from blogs and other online news sources.²⁵ Clearly, the number of Americans relying on most traditional media, such as newspapers, magazines and television, for political/election news has declined significantly since the 1990s as online sources have become much more important. *See id.* at i.

In sum, continued claims about the miniscule impact of the Internet in the media marketplace cannot be credited, and certainly cannot be used to justify retaining the current broadcast ownership rules unchanged. Given the growth of multichannel video and audio outlets and consumers’ ability to access content as “diverse as human thought” via the Internet,²⁶ claims that, for example, allowing a television broadcaster to own two stations in a local market could somehow substantially reduce the diversity of ideas and views available to consumers is not sustainable.

Localism Is Best Preserved by Permitting Broadcasters to Compete Effectively in the Digital Multichannel Marketplace

As shown by NAB in the Commission’s pending localism proceeding, local stations provide a wealth of local news and public affairs programming, political information, emergency information, other locally produced and responsive programming, and additional, unique community service (including billions of dollars of free air time for local and national public service announcements and billions of dollars in monies raised for charities, other local organizations and causes, and needy individuals).²⁷ But given the relentless competition for audience and advertising shares from the vast array of other media outlets, the real threat today to the extensive locally-oriented service offered by television and radio broadcasters is not the group ownership of stations. Rather, it is the challenge stations face in maintaining their economic viability in a market dominated by consolidated multichannel providers and other competitors. To maintain a system of competitively healthy commercial broadcast stations offering free, over-the-air service to local communities, stations must be allowed to form efficient and financially sustainable ownership structures.

Studies almost too numerous to recount have shown that local service is enhanced if local broadcasters are able to jointly own media properties in the same market. For example, several of the recent FCC-commissioned studies concluded that television stations owned by in-market newspapers aired more news programming overall, more local news programming specifically, and more political news coverage.²⁸ Similar empirical evidence from earlier studies²⁹ persuaded the Third Circuit Court of Appeals to agree with the Commission’s determination in its 2002 review of the broadcast ownership rules that the blanket ban on newspaper/broadcast cross-ownership no longer served the public interest. *Prometheus*, 373 F.3d at 398. The Court concluded that “newspaper/broadcast combinations can promote localism,” and agreed with the Commission that a “blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity.” *Id.* at 398–99. NAB fully agrees with these earlier determinations, and urges the FCC in its pending ownership review to reaffirm its repeal of the complete ban on newspaper cross-ownership.

One of the recent FCC studies similarly concluded that the co-ownership of two television stations in the same market “has a large, positive, statistically significant impact on the quantity of news programming.” *Shiman Ownership Structure Study* at 1–21. “For each additional co-owned station within the market,” this study found “an increase in the amount of news minutes by 24 per day about a 15 percent increase.” *Id.* A November 2007 study by Economists Incorporated found that same-market television stations that are commonly owned or operated are significantly more likely to carry local news and public affairs programming than other television stations, even after controlling for other factors.³⁰ Two earlier studies by BIA Financial Network demonstrated that the acquired stations in duopolies experience increases in their local audience share and revenue share following their acquisition.³¹ As this evidence makes clear, the formation of a duopoly allows the acquired station to offer programming more attractive to viewers, thereby better serving their local audiences.

Interestingly, recent research from certain opponents of ownership reform indicates that television “duopolies may lead to more local news and public affairs.”³² Although these parties generally continue to insist that, “[a]s market concentration increases, local news and public affairs decreases,” they also conclude that “duopolies appear to work in the opposite direction.” Comments of Consumers Union, *et al.*, at 98. Thus, the research of those opposing reform of the local ownership rules provide further evidence of the public interest and localism benefits that flow from

the common ownership of television stations in local markets. Indeed, even before these recent studies, the Third Circuit Court of Appeals agreed with the Commission that media other than broadcast television contributed to viewpoint diversity in local markets, and agreed that common ownership of television stations “can improve local programming.” *Prometheus*, 373 F.3d at 414–15.

Given these established public interest benefits flowing from television duopolies, NAB supports allowing duopolies more freely in markets of all sizes, especially in smaller ones where the need for television stations to form more competitively viable ownership structures in the most acute.³³ As the FCC has previously recognized, “the ability of local stations to compete successfully” in the video marketplace has been “meaningfully (and negatively) affected in midsized and smaller markets,” primarily because “small market stations are competing for disproportionately smaller revenues than stations in large markets.”³⁴ Reform of the television duopoly rule would thus enable local television stations, especially those in medium and small markets, to compete more effectively and thus ultimately to better serve their local communities.

Finally, NAB observes that, despite exaggerated claims by those opposing any modernization of the local ownership restrictions, local owners and small owners have not disappeared from the broadcast industry. According to the Commission, the number of locally owned television stations increased approximately 3 percent from 2002–2005.³⁵ In 2005, 6,498 radio stations (out of 13,590) were locally owned. *FCC Media Robustness Study* at 11. As of 2006, nearly 37 percent of all radio stations in Arbitron markets were either standalone (*i.e.*, the only station owned within its market by its station owner) or part of a duopoly (*i.e.*, part of a two station group within that local market).³⁶ Nationwide, there were, as of 2005, 4,412 unique radio station owners and 480 unique television station owners. *FCC Media Robustness Study* at 11. These figures do not even include the additional owners of thousands of low power television and low power FM stations. Given these large numbers of separate owners, it is hardly surprising that radio and television station ownership is less concentrated than other media sectors and less concentrated than other leading industries.³⁷

NAB Supports Numerous Initiatives to Increase Minority and Female Participation in the Broadcast Industry

Broadcasters have regularly supported programs that promote minority and female participation in the media business. Through our partnerships with the National Association of Broadcasters Education Foundation (NABEF) and Broadcast Education Association, NAB has helped create a comprehensive educational structure that has brought hundreds of new participants, from all backgrounds, into the broadcast industry. NABEF, for instance, conducts seminars and programs that nurture participants at every level of career development—from entry-level media sales institutes,³⁸ to managerial-level professional fellowship programs at major universities, to executive-level Broadcast Leadership Training (BLT) for those who aspire to own stations. To date, more than 15 percent of BLT graduates have gone on to acquire stations, and many others are in various stages of station acquisition.

As NAB has frequently explained, the public interest is best served by policies designed to encourage minority and female participation in a competitively vibrant broadcast industry. Creating a fragmented, undercapitalized and uncompetitive broadcast industry via undue restrictions on broadcast ownership would not represent an effective means of promoting minority and female ownership.³⁹ Instead, Congress and the Commission should look for solutions promoting the long-term viability of women and minority entrants into broadcasting. To that end, NAB strongly supports policies that would help ameliorate the lack of access to capital that everyone agrees inhibits small and minority- and female-owned businesses from entry into the broadcasting and other communications-related industries. NAB has long supported the reinstatement of a tax incentive program as the most effective way to promote diversity of ownership in broadcasting. NAB also supports a range of other proposals made by the Minority Media and Telecommunications Council to promote the entry and participation of minorities and women in broadcasting.⁴⁰ The best way to reach this goal is through public/private partnerships and market-based stimulants that will promote entry and the long-term viability of female and minority entrants in a competitively healthy broadcast industry.

NAB further observes that the assumption that permitting the common ownership of broadcast stations automatically has a deleterious effect on minority participation in the broadcast industry is questionable. One study purporting to find that the very limited relaxation of the duopoly rule in 1999 had a negative impact on minority and female ownership of television stations⁴¹ was found to be “fatally flawed” by a peer reviewer of that study.⁴² Other parties have also criticized this duopoly study

for its “non-transparent, biased methodology” and its “unsupported conclusions and biased statements.”⁴³ The data provided by some parties claiming that increased common ownership “unambiguously” leads to reduced minority/female ownership does not support their claim. For instance, according to data assembled by Consumers Union, *et al.*, members of minority groups owned a greater number of television stations in 2006 than they did before the FCC modestly relaxed the television duopoly rule in 1999.⁴⁴ Earlier studies found that “minority groups increased their radio ownership” after 1996.⁴⁵

Thus, any data purporting to link common ownership with a decline in minority and female ownership must be carefully evaluated. Rather than refusing to modernize the local broadcast ownership rules due to questionable and unproven assumptions about such a link, NAB urges Congress and the FCC to implement policies that will ensure a financially viable radio and television industry, taking into account ever-increasing competition from a myriad of new sources. Initiatives to promote the greater participation of women and minorities in broadcasting—which, as explained above, NAB strongly supports—would be moot in an environment where radio and television broadcasters are held back from effectively competing in today’s digital media marketplace.

Conclusion

Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded limitations will enable free, over-the-air broadcasters to compete more effectively against multichannel video and audio operators and Internet-based media providers, many of which earn subscription fees yet also compete against broadcasters for vital advertising revenues unencumbered by local ownership restrictions. As the FCC has previously recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer costly local services such as local news. Above all, broadcasters want to be able to continue to serve their local communities and audiences effectively. Reform of broadcast-only local ownership limitations can help local stations do just that.

Endnotes

¹ *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992) (*FCC Radio Order*).

² H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995) (*House Report*).

³ Section 202(h) of the Telecommunications Act of 1996 (1996 Act), as amended, requires the FCC to review its broadcast ownership rules every 4 years and determine whether those rules remain “necessary in the public interest as the result of competition.” Pub. L. No. 104–104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108–199, § 629, 118 Stat. 3 (2004).

⁴ Jonathan Levy, Marcelino Ford-Livene, Anne Levine, OPP Working Paper Series #37, *Broadcast Television: Survivor in a Sea of Competition* (Sept. 2002).

⁵ *Internet ads hit another milestone*, Chicago Tribune, June 7, 2007.

⁶ Jack Myers Media Business Report, *2007 Advertising and Marketing Communications Forecast*, Nov. 1, 2006.

⁷ Louis Hau, *Web Ad Spending To Eclipse Radio In 2007*, forbes.com, Aug. 29, 2007.

⁸ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, Table 4 (2006). This report also documented the continued growth in viewing shares of cable/satellite television, at the expense of broadcast television.

⁹ *Local Television Market Revenue Statistics*, Attachment F to NAB Comments in MB Docket No. 06–121 (filed Oct. 23, 2006).

¹⁰ Claims by opponents of reform that post-1996 ownership changes in the radio industry have resulted in competitive harm are unfounded. A recent study commissioned by the FCC concluded that “consolidation in local radio has no statistically-significant effect on advertising prices” and that “[n]ational ownership has a statistically significant, negative effect on advertising prices.” Tasneem Chity, CRA International, Inc., *Station Ownership and Programming in Radio* at 40–41 (June 24, 2007) (emphasis added). This study is consistent with previous academic studies on advertising and consolidation in the radio industry.

¹¹ See, e.g., BIA Financial Network, *Media Outlets Availability by Markets*, Attachment A to NAB Comments in MB Docket No. 06–121 (Oct. 23, 2006) (an examination of 25 Designated Market Areas of various sizes from 1986–2006 found an average increase of 39.0 percent in the number of full power television stations; an average increase of 42.3 percent in the number of full power radio stations; an increase in multichannel video programming service penetration from 52.0 percent to 86.5 percent; and an increase in the average number of cable delivered channels in use from 31.7 channels in 1986 to 283.3 channels in 2006). This BIA Financial Network study also showed that, on average, there were 8.8 different owners of the 11.7 full power television stations, and 37.6 different owners of the 73 radio stations, in these DMAs.

¹² See Scott Roberts, Jane Frenette and Dione Stearns, *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (Sept. 2002).

¹³ See BIA Financial Network, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance*, Attachment C to NAB Comments in MB Docket No. 06–121 (filed Oct. 23, 2006).

¹⁴ Steven Berry and Joel Waldfogel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25–26 (April 1999). Accord Steven Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q. J. Econ. 1009 (Aug. 2001); BIA Financial Network, *Has Format Diversity Continued to Increase?*, Attachment A to NAB Comments in MM Docket Nos. 01–317 and 00–244 (filed March 27, 2002); Bear Stearns Equity Research, *Format Diversity: More from Less?* (Nov. 2002); BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences*, Attachment G to NAB Comments in MB Docket No. 06–121 (filed Oct. 23, 2006).

¹⁵ *Over-the-Air Radio Service to Diverse Audiences* at 9–10; 13–14. This study also documented growth in the number of Urban programmed stations and Asian language stations. See *Id.* at 10–12.

¹⁶ See David Pritchard, *A Tale of Three Cities: “Diverse and Antagonistic” Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 Fed. Comm. L.J. 31 (2001); David Pritchard *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002). An examination of 2004 Presidential endorsements similarly found no pattern among the endorsements made by commonly owned newspapers, with newspapers owned by the same company frequently endorsing different candidates. See Comments of Media General in MB Docket No. 06–121, Appendix 6 (filed Oct. 23, 2006).

¹⁷ See Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* (June 13, 2007) (*Milyo Television News Study*).

¹⁸ Matthew Gentzkow & Jesse Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers* at 4–5, 43–44 (Nat’l Bureau of Econ. Research, Working Paper No. 12707, 2006).

¹⁹ Arbitron/Edison Media Research, *Internet & Multimedia 2007 Report Summary*, at 1, June 26, 2007.

²⁰ Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study: May 7–27; May 29–31; June 1–3, 2007 (FCC Study 1)*.

²¹ Compare Nielsen Media Research, Inc., *Consumer Survey on Media Usage* (Sept. 2002), at 88, 90, 94, with *FCC Study I* at 4, 30, 72 (showing that number of respondents not using traditional media, including radio and television, increased substantially between 2002 and 2007).

²² John Horrigan and Aaron Smith, Pew Internet & American Life Project, *Home Broadband Adoption 2007* at 11–12 (June 2007).

²³ Mary Madden, Pew Internet & American Life Project, *Online Video* at i (July 25, 2007) (*Pew Online Video Report*).

²⁴ Lee Rainie and John Horrigan, Pew Internet & American Life Project, *Election 2006 Online* at ii (Jan. 17, 2007) (*Pew 2006 Election Report*).

²⁵ See NAB *Ex Parte* in MB Docket No. 06–121 at 14–15 (filed Nov. 1, 2007) (giving numerous examples of the growth of the Internet in the 2008 campaign).

²⁶ *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

²⁷ See Comments of NAB in MB Docket No. 04–233 (filed Nov. 1, 2004) Reply Comments of NAB in MB Docket No. 04–233 (filed Jan. 3, 2005).

²⁸ See *Milyo Television News Study*; Gregory Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* (July 23, 2007); Daniel Shiman, *The Impact of Ownership Structure on Television Stations’ News and Public Affairs Programming* (July 24, 2007) (*Shiman Ownership Structure Study*).

²⁹ A 2002 FCC study concluded that network affiliated television stations co-owned with newspapers received higher ratings for their local news programs, aired more hours of local news, and received a higher number of awards for local news than other network affiliates. See Thomas Spavins, Loretta Denison, Scott Roberts and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs* (2002).

³⁰ Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage: An Update*, Attachment to NAB Comments in MB Docket No. 06–121 (filed Nov. 1, 2007) (a station in a same-market combination is 6.2 percent more likely to carry such programming than a station that is not in such a local combination).

³¹ See BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies*, Attachment H to NAB Comments in MB Docket No. 06–121 (filed Oct. 23, 2006); BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*, Attachment A to Comments of Coalition Broadcasters in MB Docket No. 02–277 (filed Jan. 2, 2003).

³² Further Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06–121 at 98 (filed Oct. 22, 2007) (Comments of Consumers Union, *et al.*).

³³ The current rule limits the formation of duopolies only to large markets. This rule allows an entity to own two television stations in the same DMA only if at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial and noncommercial full power television stations would remain in the DMA after the combination. In 2002, the Court of Appeals for the D.C. Circuit found that the FCC had failed to justify its exclusion of nonbroadcast media, including cable television, from the duopoly rule’s eight voice threshold, and remanded the rule to the FCC for further consideration. See *Sinclair*, 284 F.3d at 165, 169. This remand remains pending at the FCC and the eight voice standard still remains in effect.

³⁴ 2002 *Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13698 (2003) (2002 *Biennial Review Order*). NAB has further documented the “different economics of station ownership depending on market size.” *Id.* See, e.g., *Local Tele-*

vision Market Revenue Statistics, Attachment F to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006); NAB, *Ex Parte* in MB Docket No. 06-121 (filed Sept. 25, 2007) at Attachments B, E & F.

³⁵Kiran Duwadi, Scott Roberts and Andrew Wise, *Ownership Structure and Robustness of Media* at 5, 11 (2007) (*FCC Media Robustness Study*) (reporting 439 locally owned television stations in 2005).

³⁶*Independent Radio Voices in Radio Markets*, Attachment B to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

³⁷See, e.g., *Percentage of Industry Revenues Earned by Top 10 Firms in the Sector*, Attachment E to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

³⁸NABEF sponsors Media Sales Institutes at Howard University, Florida A&M, and the Spanish Language Media Center of the University of North Texas. These intensive ten-day training programs prepare talented students with diverse backgrounds for sales careers in the broadcast industry. To date, these programs have trained over 220 students for media sales careers. Close to 90 percent have been hired.

³⁹See Reply Comments of The Center for Regulatory Effectiveness in MB Docket No. 06-121 at 2-4 (Oct. 2007) (explaining why ownership restrictions artificially depress the value of broadcast stations, harming both current and potential female and minority station owners).

⁴⁰See Comments of NAB in RM-11388 (filed Sept. 5, 2007); Comments of NAB in MB Docket No. 06-121 (filed Oct. 1, 2007); Reply Comments of NAB in MB Docket No. 06-121 (file Oct. 16, 2007).

⁴¹See Allen Hammond, et al., *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006* (2007).

⁴²B.D. McCullough, Peer-Review Report on "The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006" by Hammond, et al., (finding that the Hammond study failed to consider or control for economic, demographic or other differences in television markets and that such errors "pervade[] every aspect of the analysis").

⁴³Comments and Data Quality Petition of The Center for Regulatory Effectiveness in MB Docket No. 06-121 (Oct. 2007) (arguing that the FCC cannot use or rely upon the Hammond duopoly study).

⁴⁴See Appendix A, *The Lack of Racial and Gender Diversity in Broadcast Ownership & The Effects of FCC Policy: An Empirical Analysis* at Table 13 (Sept. 2007), attached to Comments of Consumers Union, et al., in MB Docket No. 06-121 (filed Oct. 1, 2007) (showing that members of minority groups owned 40 full power commercial television stations in 1998, 35 stations in 2000, and 44 stations in 2006).

⁴⁵National Telecommunications and Information Administration, *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* at 38 (Dec. 2000). See also Kofi A. Ofori, *Radio Local Market Consolidation & Minority Ownership* at 10-12, Attached as Appendix One to Comments of MMTC in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002) (showing increase in the number of minority owned and controlled radio stations since 1997).

November 7, 2007

Chairman DANIEL K. INOUE,
Senate Commerce Committee,
Washington, DC.

Ranking Member TED STEVENS,
Senate Commerce Committee,
Washington, DC.

RE: NOVEMBER 8, 2007 SENATE COMMERCE COMMITTEE HEARING, "LOCALISM,
DIVERSITY AND MEDIA OWNERSHIP"

Dear Senators Inouye and Stevens:

On behalf of the Independent Film and Television Alliance (IFTA), which represents independent film and television producers and has more than 180 member companies, I would like to submit this letter for the record. These companies, who produce and distribute entertainment programming that is financed outside of the seven major U.S. studios, are responsible for more than 400 films each year and countless hours of television programming. Collectively, they generate more than \$4 billion in distribution revenues annually. Since 1980, over half of the Academy Award winners for best picture have been produced or distributed by IFTA members, including this year's "The Departed," last year's "Crash," and the prior years' "Lord of the Rings" and "Million Dollar Baby."

IFTA commends the Committee for holding this hearing and for its continued oversight on the important issue of media consolidation. IFTA would like to call the Committee's attention to an important aspect of this debate—the inability of independent producers to distribute their product today in the television marketplace through either broadcast or cable networks. Source diversity has been virtually eliminated in American television, and the loser is the American viewer. IFTA has filed comments at the FCC, calling on the FCC to examine this aspect of media consolidation and to reinstitute regulatory safeguards to restore competition and diversity. IFTA urges this committee to encourage the FCC to address the issue of source

diversity in the pending Media Ownership Proceeding. This guidance is particularly important in light of the FCC's decision in the previous Biennial Review to defer action on this issue.

Since the elimination of the Financial Interest in Syndication Rules (Fin/Syn) and their related consent decree, there has been a sea change in the television marketplace. Through the early 1990s, for example, independent production companies were able to sell programming to broadcast networks. This provided diverse, high-quality programming to the American public. From 1980 through the demise of Fin/Syn in the early nineties, nearly half of the Emmys given for "Best Drama" and "Best Comedy" series were awarded to independent producers. Since then, independent production has fallen from 50 percent in 1995 to only 18 percent of primetime programming today.

Independents are currently only able to sell their products to networks at below-cost prices and are forced to relinquish syndication rights. Additionally, major television networks have stopped acquiring independent feature films or movies-of-the-week for broadcast. And, a number of IFTA members have been advised by networks or cable channels that they would no longer acquire independently produced children's programming or family films unless ownership rights are included and they can control its content with "traditional" family themes being expressly out of favor. As a result, many Members have been forced to abandon production of this type of programming.

As a result of the easing of program diversity regulation, there has been a decline in quality, creativity and diversity of programming. IFTA respectfully requests that the Congress encourage the FCC to reinstitute reasonable regulation to ensure program diversity. Specifically, IFTA seeks a 75 percent cap on the amount of self-produced network programming that major broadcast and cable networks may distribute. Without such action, independent voices will continue to be silenced and the diversity of programming for the American viewer will continue to decline.

Sincerely,

JEAN M. PREWITT,
President and CEO,
Independent Film & Television Alliance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
ALEX NOGALES

Question 1. Are you aware of any studies on the effect of media consolidation on hate speech? If the FCC convenes a minority ownership task force, should the task force study the issue of hate speech?

Answer. In 1993, the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) published a report titled "The Role of Telecommunications in Hate Crimes." This report needs to be updated to reflect the current telecommunications environment which includes the increase popularity of talk radio and the Internet. Earlier this year, Congressmen Dingell and Markey wrote a letter to the NTIA requesting an update on this study. Senator Menendez recently wrote to Commerce Secretary Gutierrez making the same request. It is imperative that this government study be updated to confirm or deny the linkage between hate speech in the media and the increase of hate crimes, which has already been documented.

The Anti-Defamation League recently released a report titled "Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream" posted at http://www.adl.org/civil_rights/anti_immigrant/ that addresses how the strategy of blaming immigrants for all of society's ills is now spreading to mainstream America. The FBI released its 2006 Hate Crime Statistics showing that in 2006 hate crimes against Latinos increased by 25 percent since 2004. To read the FBI's press release, go to <http://www.fbi.gov/ucr/hc2006/pressrelease.html>. Additionally, the Southern Poverty Law Center will soon release a report on the most egregious of these hate crimes. And as they note, this is not a city, regional, or state occurrence, it is a national one. The violence isn't just against the undocumented; it is also against documented Latinos and citizens because no one can tell one from the other.

Question 2. What are the major obstacles to minority media ownership?

Answer. The greatest obstacle to minority ownership is media consolidation. The majority of radio and TV licenses were granted during a period of time in our country when segregation was still legal. The history of racism in the United States has prevented people of color to build wealth. When segregation ended, people of color were still not in a position to purchase stations because of the lack of wealth that

exist within communities of color. People of color have to seek bank loans if they want to buy a station. But they are less likely to receive a bank loan, particularly when the price of the station continues to increase as a result of consolidation. The historic barriers to ownership have only increased with consolidation.

A recent study from the non-profit group Free Press found that the pressures of consolidation and concentration brought on by bad policy decisions have crowded out minority owners, who tend to own just a single station and find it difficult to compete with their big-media counterparts for programming and advertising revenue.

Free Press' analysis suggests that minority-owned stations thrive in more competitive, less concentrated markets. Even if the size of the market is held constant, markets with minority owners are significantly less concentrated than markets without minority owners.

- The probability that a particular station will be minority-owned is significantly lower in more concentrated markets, even if market and station characteristics are controlled for.
- White male and large corporate station owners tend to own far more stations than their minority and female counterparts.

Question 3. Do you believe that broadcast licensees should have to satisfy specific public interest standards? If so, what specific public interest standards do you recommend?

Answer. The Communications Act of 1934 requires the broadcast licensees to serve the "public interest, convenience, and necessity" in exchange for their use of a scarce public asset—the airwaves—for free. As public trustees, the Federal Communications Commission (FCC) has found that broadcasters must provide reasonable access to candidates for Federal elective office to enhance our Nation's political discourse, to provide a minimum amount of children's educational programming, and to serve local civic, informational, minority and disability needs of the public.

However, forces of consolidation over the past decade have greatly diminished any meaningful fulfillment of public interest obligations on the part of the broadcast licensees. The trends of horizontal conglomeration and vertical integration in the broadcast industry have led to drastic reduction in the amount of independently produced programming, a reduction in local public affairs coverage, and diminished reporting on local candidate races.

We support the Broadcast Licensing in the Public Interest Act introduced by Congresswoman Anna G. Eshoo that would revive the public interest standard.

- First, the bill reduces a broadcast license term from eight years to three. The 3-year term will bring greater oversight and scrutiny to license renewals.
- Second, the bill requires broadcast licensees seeking a renewal to demonstrate that they have made a dedication to civic affairs of its community and to local news gathering. The bill also mandates that broadcasters air locally produced programming and make a commitment to provide a public presentation of the views of candidates and issues related to local, statewide or national elections.
- Finally, the bill mandates that broadcasters provide quality educational programming for children.

Question 4. How can we make sure that the digital transition results in more coverage of issues important to the local community and to a diverse population?

Answer. The DTV transition will increase efficient use of the spectrum, expand consumer choice for video programming, and increase the amount of spectrum available for public safety and other wireless services. As television broadcasters prepare for their transition to digital television in 2009, Congress has a unique opportunity to improve broadcasters' service to the public by enhancing diversity of viewpoints, promoting civic participation, expanding local, community and children's programming and carrying minority networks. We support the creation of an FCC Public Interest Obligations task force to study the matter and make recommendations that will produce the desired results.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO
TIMOTHY F. WINTER

Question. Do you believe that broadcast licensees should have to satisfy specific public interest standards? If so, what specific public interest standards do you recommend?

Answer. Thank you very much for the question. The issue of public interest obligations for broadcasters has been at issue at the FCC since the dawn of the agency

and has been magnified by the digital transition and the much greater bandwidth afforded broadcasters in the multicast era. While there are many valid and reasonable suggestions for public interest standards, I will focus on those consistent with the mission of the Parents Television Council: to protect children from sex, violence and profanity in entertainment.

Broadcast licensees must commit themselves to abide by the spirit as well as the letter of the law as it addresses the issue of broadcast indecency. Unfortunately, the broadcast networks have challenged the FCC's adjudication of Federal broadcast decency law and have asserted a "right" to air profanity at any time of day, even when we know there to be tens of millions of children in the audience. Even worse, CBS argued in Federal court in September that the Janet Jackson incident—a striptease in the middle of the Super Bowl—was somehow not indecent.

In addition, broadcast licensees must commit themselves to airing more adult-themed programming in an appropriate and responsible manner. Shows with strong language, sex and graphic violence should be limited to the later prime time hours. As demonstrated by our research on the first hour of prime time—what used to be known as the Family Hour—there is an increasing shift of more graphic content migrating toward the earlier times. It is in the public interest to protect children from this type of programming, so it should be within broadcast licensees' public interest requirements to adhere to a reasonable and time-honored restriction of adult content to the later time slots.

Finally, PTC research has shown an alarming lack of consistency and transparency in the current TV Ratings system. In fact, television ratings are inaccurate as much as 60–80 percent of the time. Without a consistent, accurate and transparent ratings system, parents and families can have no confidence in the v-chip or any other parental control devices designed to protect children from graphic content. It is clearly in the public interest for broadcasters to give parents the tools they need to protect their children, and it should be incumbent upon licensees to adopt a new ratings system that embodies a more trustworthy approach.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
JAMES F. GOODMON

Question 1. You have advocated holding broadcast licensees to minimum public interest standards. What specific public interest standards do you recommend?

Answer. Since participating on the Gore Commission in 1998, I have advocated for the following minimum public interest obligations:

- Public Affairs Programming—two hours weekly phased in as follows: six months—one-half hour; twelve months—one hour or two half-hours; and eighteen months—two hours. At least 1 hour of public affairs programming should be locally produced and should run between the hours of 6 and 11 p.m. News should be excluded from public affairs minimums. Thirty to sixty days before a general election public affairs programming should focus on candidate-centered election issues.
- Public Service Announcements ("PSAs")—110 to 150 per week for each station or multicast channel. At least half of the PSAs should be locally produced and directed toward local issues and a significant number should run in prime time for television and drive times for radio.

These minimums would clarify to all public airwaves stakeholders what is expected. Although I believe many broadcasters will exceed these standards, these will give broadcasters and the public a starting point.

Question 2. What ramifications do you think there should be for broadcasters who fail to meet minimum public interest standards?

Answer. With the FCC's adoption of its Standardized Disclosure item, our viewers will now be able to view our public files online. Therefore, I support leaving it to our viewers to hold broadcasters accountable directly and at the FCC.

Question 3. The "UHF discount" rule allows UHF stations to count only 50 percent of the local designated market area (DMA) for purposes of the national television ownership cap. How will the digital transition on February 17, 2009 affect the UHF discount?

Answer. As background: The UHF discount was originally adopted in 1985 to equalize the differences in coverage between an analog UHF (off-air channels 14–69) and VHF (off-air channels 12–13) television channel. Typically, in the analog world, because a UHF station operates at higher frequencies, it is subject to greater terrestrial interference than a VHF station. As noted many times in FCC reports

and orders, the singular purpose of the UHF discount was to compensate for the audience reach handicap of UHF stations. Not factoring in the digital transition, technological advancements and cable and satellite carriage have diminished the need for the UHF discount. These advancements include improved UHF television receiver standards that are markedly different than 1985 and the ability of UHF stations to maximize power. Also, today cable and satellite carriage exceed 86 percent of all U.S. TV households compared to 30 percent penetration in 1985 when the UHF discount was adopted. Mandatory cable and satellite carriage ensure that UHF stations can reach viewers the same as VHF stations within a market, resulting in no distinction between UHF and VHF stations.

With the digital transition, there is more tangible evidence that the need for the UHF discount has disappeared. As evidence of improvement in UHF signal coverage, 94 percent of all digital television stations will be UHF. Almost all stations elected to “maximize” their market coverage rather than just replicate their analog signals. As noted in the FCC’s *2002 Biennial Review*, 18 FCC Rcd at 12847: “At this point, however, it is clear that the digital transition will largely eliminate the technical basis for the UHF discount because UHF and VHF signals will be substantially equalized.”

Although Capitol has long advocated that the UHF discount should be eliminated for all of the above reasons, a practical question arises on February 18, 2009, how do you count a station that was on a VHF channel in the analog world, but moves to a UHF channel for digital? If the answer is that station is now counted at 50 percent, not 100 percent, then more consolidation can happen, and for all practical purposes, the 39 percent national television cap becomes a 78 percent cap.

Question 4. How can we make sure that the digital transition results in more coverage of issues important to the local community?

Answer. Multicasting allows stations the flexibility to offer much more local programming. In Raleigh-Durham, Capitol launched a 24-hour news channel supported by our WRAL news staff. The WRAL NewsChannel allows WRAL to better inform its viewers on local matters, while continuing to entertain them with its CBS and syndicated programming on WRAL-DT.1. The WRAL NewsChannel does much more than recycle WRAL’s newscasts. Here are some examples of the breadth of coverage:

- Complete coverage of the Duke lacrosse case, including gavel to gavel coverage of the three hearings and trial, 6 days of coverage of proceedings related to Durham District Attorney Mike Nifong’s actions, and the Durham/Duke Special Panel Review meeting.
- Two days of coverage of former Speaker of the NC House Jim Black’s hearings before a state board due to misconduct.
- Hosted extended-length forums on subjects including the death penalty and transportation.
- Televised the NC Court of Appeals hearing on a challenge to the NC State Lottery.
- Televised the funeral of long-time Wake County Sheriff John Baker.
- Televised numerous full-length press conferences.

Based on the needs of the community, multicasting allows you to in effect narrowcast—something that is difficult to do in the traditional analog, one-channel world. In addition, Capitol supports the application of minimum public interest standards on each multicast channel. Unfortunately, there is no multicasting must carry or carry one/carry all. With cable and satellite carriage accounting for more than 86 percent of our audience, retransmission deals are critical to the success of any multicast channel.

Thank you very much and please let me know if you would like more information.

